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# TRANSCRIPT OF RECORD.

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1915.

No. 521.

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GEORGE S. BADDERS, PLAINTIFF IN ERROR,

vs.

THE UNITED STATES.

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IN ERROR TO THE DISTRICT COURT OF THE UNITED STATES FOR  
THE DISTRICT OF KANSAS.

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FILED JUNE 19, 1915.

(24,804)





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1 THE UNITED STATES OF AMERICA:

To the United States of America, Greeting:

You are hereby cited and admonished to be and appear in the Supreme Court of the United States, at the City of Washington, D. C., thirty days from and after the day this Citation bears date, pursuant to a writ of error, filed in the Clerk's office of the District Court of the United States for the First Division of the Judicial District of Kansas, wherein George S. Badders is plaintiff in error and you are defendant in error, to show cause, if any there be, why the Judgment and sentence rendered against the said George S. Badders, as in said writ of error mentioned, should not be corrected, and why speedy justice should not be done the parties in that behalf.

Witness, The Honorable D. P. Dyer, Judge of the District Court of the United States for the District of Kansas, this 3d day of February, A. D. 1915.

[Seal of District Court U. S., District of Kansas.]

DAVID P. DYER,

*United States District Judge for the District of Kansas.*

Service of the foregoing acknowledged this 3d day of February, 1915.

FRED ROBERTSON,

*U. S. Attorney.*

[Endorsed:] No. 4160. United States District Court, First Division, District of Kansas. United States of America vs. George S. Badders. Citation. Filed Feb'y 3rd, 1915. Morton Albaugh, Clerk.

2 UNITED STATES OF AMERICA, ss:

The President of the United States to the Honorable the Judge of the District Court of the United States for the First Division of the Judicial District of Kansas, Greeting:

Because, in the records and proceedings, as also in the rendition of the judgment of a plea which is in the said District Court, before you, at the January Term, 1915, thereof, between the United States of America, plaintiff, and George S. Badders, defendant, a manifest error hath happened, to the great damage of the said George S. Badders, as by his complaint appears.

We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the United States Supreme Court, together with this writ, so that you have the said record and proceedings aforesaid, at the city of Wash-



ington, D. C., and filed in the office of the Clerk of the United States Supreme Court, on or before the 5th day of March, 1915, to the end that the record and proceedings aforesaid being inspected, the United States Supreme Court may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States, should be done.

Witness, the Honorable Edward D. White, Chief Justice of the Supreme Court of the United States, this 3rd day of February, in the year of our Lord one thousand nine hundred and Fifteen.

Issued at office in the City of Kansas City, Kansas, with the seal of the District Court of the United States for the First Division of the Judicial District of Kansas, dated as aforesaid.

[Seal of District Court U. S., District of Kansas.]

MORTON ALBAUGH,  
Clerk District Court United States, First Division  
of the Judicial District of Kansas.

Allowed by—

— — —, Judge.

[Endorsed:] No. 4160. United States District Court, First Division of the Judicial District of Kansas. United States vs. George S. Badders. Writ of Error to the District Court of the United States for the First Division of the Judicial District of Kansas. Filed 3rd day of Feb'y, 1915. Morton Albaugh, Clerk.

*Return to Writ.*

UNITED STATES OF AMERICA,

*First Division of the Judicial District of Kansas, ss:*

In obedience to the command of the within writ, I herewith transmit to the United States Supreme Court a duly certified transcript of the record and proceedings in the within entitled case, with all things concerning the same.

In witness whereof, I hereunto subscribe my name, and affix the seal of said District Court, at office in the City of Topeka, this 10th day of June, A. D. 1915.

[Seal of District Court U. S., District of Kansas.]

MORTON ALBAUGH,  
Clerk of said Court.

3

THE UNITED STATES OF AMERICA,

*The District of Kansas, First Division, ss:*

Sec. 215, Penal Code, 1910.

In the District Court of the United States in and for the District Aforesaid, at the April Term Thereof, A. D. 1914.

The Grand Jurors of the United States, within and for the First Division of the District of Kansas, at Topeka, duly impaneled,

worn and charged at the term aforesaid of the court aforesaid, on their oath present, that one George S. Badders, on or about the 28th day of November, A. D. 1913, in the said division of said district, then and there being, did then and there and theretofore unlawfully, knowingly, fraudulently, designedly and feloniously devise a scheme and artifice to defraud many and various persons, partnerships, firms, and corporations, residents of the United States, to-wit: Lepero, Michael & Son, a corporation duly organized incorporated and existing under the laws of the state of New York, in the city of New York; Cohen & Lang, a corporation duly organized, incorporated and doing business under the laws of the state of New York, in New York City; Lipps Bros., a partnership firm consisting of Philip Lipps, Charles Leon Lipps, and Bernard H. Lipps, doing business under the firm name and style of Lipps Bros., of New York City, New York; H. Kamber, of New York City, New York, doing business under the name of H. Kamber & Company; Morris Glickman, of Philadelphia, Pennsylvania, doing business under the name of M. Glickman & Company; Cohen, Goldman & Company, a co-partnership consisting of Hyman Cohen and William Goldman, of New York City, New York, doing business under the name and style of Cohen, Goldman & Company; Rosenwald & Weil, a corporation of Chicago, Illinois, duly incorporated and existing under the laws of the state of Illinois; The Ornstein & Rice Neckwear Company, of St. Louis, Missouri, a partnership, consisting of William Ornstein, B. E. Rice, Albert K. Baum, Nat K. Baum, and Charles A. Werlheimer, doing business under the name and style of The Ornstein & Rice Neckwear Company; Cluett, Peabody & Company, a corporation duly organized and incorporated under the laws of the state of New York, and through its branch office, doing business in Kansas City, Missouri; The M. C. Lilley & Company, a corporation duly organized and incorporated under the laws of the state of Ohio, of Columbus, Ohio; The Hartman Trunk Company, a corporation, duly organized and incorporated under the laws of the state of Wisconsin, and maintaining an office and place of business in the city of Chicago, Illinois; The Ely Walker Dry Goods Company, a corporation duly organized and incorporated under the laws of the state of Missouri (a more complete and correct description of said persons, firms, partnerships and corporations is to these Grand Jurors unknown, and for that reason cannot be set out herein), and many and various other firms and persons to these Grand Jurors unknown, of goods, wares, merchandise, and property of value, by means of various and numerous promises, representations, and false and fraudulent pretenses and promises, which said scheme and artifice to defraud was and is as follows, to-wit:

That he, the aforesaid George S. Badders, who was then and there and at all the times herein mentioned, interested in and a representative and officer of a certain corporation known as The Badders Clothing Company, of Topeka, Kansas, which is hereinafter referred to as The Badders Company, and said corporation, through and by said George S. Badders, used in its business the name of The Badders Company, which said company was then and there and at the

5 times herein mentioned conducting a mercantile business, and that on or about the date herein mentioned, and theretofore, George S. Badders, planned, contrived and devised that he would and did represent, and pretend that said The Badders Company, of which he was the president, was a going concern, with large assets, and solvent, and able to pay for all goods ordered by him for it, and so received by it, and that said company was financially able and would be financially able to protect all of its creditors, and that it would do so; that the capital stock of said corporation, which had theretofore been in the amount of Thirty Five Thousand (\$35,000.00) Dollars, had been increased in the sum of Twenty Five Thousand (\$25,000.00) Dollars, making it then Sixty Thousand (\$60,000.00) Dollars; that said increase in capital stock had been fully subscribed and would be paid in full so as to be available for the payment of creditors on and immediately after December 20th, 1913; that the said The Badders Company would be able to meet its debts and liabilities and pay them in full, that he had planned a sensational sale whereby he would sell, in the general course of business in said store, a large amount of goods, such as was furnished by the parties hereinbefore mentioned, for cash and by that means furnish a satisfactory explanation to said parties for the numerous large orders for goods which he would be making, and thereby cause and procure the merchants, firms and corporations hereinbefore mentioned and described to sell and deliver to the Badders Company, upon its credit, to be paid for in the future, large amounts of merchandise, consisting of clothing, men's furnishing goods, and various kinds of merchandise of the amount and value of many thousands of dollars, the exact amount of which is to these Grand Jurors unknown, and after having so obtained said goods, he, the said George S. Badders, would then sell and dispose of the same in part as a sensational sale, at a sacrifice, and  
6 for less than the retail price, if necessary, in order to dispose of said merchandise rapidly for cash; that he would sell some of said goods to various other merchants and business firms for less than the cost price, or the price agreed to be paid by him to the parties from whom he received the same.

And to evade paying therefor, he would and did have pretended meetings of the Board of Directors of the said The Badders Company, in which he had them vote and they did vote for and declare a dividend of twenty five per cent (25%) at one time and twenty five per cent (25%) at another; also have himself voted an increase in salary of Five Thousand (\$5,000.00) Dollars per annum, in addition to his then salary of Sixty (\$60.00) Dollars per week, and twenty five per cent (25%) commission of the Ten Thousand (\$10,000.00) Dollars increase of capital for selling said stock to himself, and that he would be paid fifteen per cent (15%) on all sales over \$50,000.00 per annum, and five per cent (5%) thereon to the secretary, and do this regardless as to whether there were any profits in the business of the said company or not; he would ship some of the goods so received to other points and store them, and also take large amounts of valuable goods out of said store and have them

removed from said place of business and dispose of them in various quantities to other merchants, and not sell them in the ordinary course of business, in the place of business occupied by The Badders Company, as he would have and cause those from whom he received the goods to believe he would; that as a part of his said scheme he would write letters to his many creditors whom he owed prior to the receiving and obtaining of goods as aforesaid, telling them of the sensational sale he was making, and make statements to them of the additional subscription to the capital stock of The Badders Company which he would and did in substance represent to them would be paid and available on and after December 7 20th, 1913, so that the creditors whom he already owed would extend to him credit and delay the enforcing of the collection of a large amount of debts already due from said The Badders Company, by which said delay he would have the time and opportunity to dispose of large quantities of merchandise for cash, and appropriate the proceeds thereof to his own personal use, to the fraud and injury of The Badders Company, and the many and various persons, firms, and corporations, among whom are those hereinbefore named, from whom he would obtain the merchandise aforesaid; that it was a part of his said scheme that he would so order the merchandise aforesaid, as aforesaid, and dispose of it for cash, in the manner herein described, without paying for the same; that he, the said George S. Badders, then and there and at all the times herein mentioned, and at the various times he ordered the goods, and merchandise, from the various parties aforesaid, then and there unlawfully and feloniously designed and intended not to pay for the same, but to so order, obtain and convert said merchandise into money and appropriate said money to his own use for personal gain, and thereby cheat and defraud the parties hereinbefore mentioned, all as aforesaid.

And the Grand Jurors aforesaid, upon their oath aforesaid, do further present that it was not true that the said The Badders Company had large assets; that it was not true that said company was solvent and a going concern; that it was already owing large sums of money which it could not pay, and which the said George S. Badders did not intend that it should pay, and he had control of the business operations of the said The Badders Company; that he then and there knew that the Twenty Five Thousand (\$25,000.00) Dollar subscription was a pretended increase of capital stock in The Badders Clothing Company which would not be paid or ever become available for the payment of goods ordered by him for said company, and did not intend that it should be so paid on December 20th, 1913, or at any other time, and he, the said George S. Badders, then and there well knew that the pretenses, promises and statements so made by him as aforesaid, and so used by him, were false and untrue, all of which he, the said George S. Badders, unlawfully and feloniously did with intent then and there to cheat and defraud any and all persons whomsoever might be so induced as aforesaid to send to him and the said The Badders Cloth-

ing Company goods and merchandise so ordered by him under his said scheme and artifice to defraud.

And the Grand Jurors aforesaid, upon their oath aforesaid, do further find and present that within the jurisdiction aforesaid of the court aforesaid, for the purpose of promoting and carrying on and executing said scheme and artifice to defraud, and in attempting so to do, the aforesaid George S. Badders did then and there, and on or about the 28th day of November, A. D. 1913, with the intent as aforesaid unlawfully and willfully and feloniously, place and cause to be placed in the post office establishment of the United States, at Topeka, Kansas, in said division and district, the same being a part of the post office establishment of the United States, and an authorized depository for mail, a certain letter, to be sent and delivered by the post office establishment of the United States, directed to Spero, Michael & Son, 836 Broadway, New York, a true copy of said letter being as follows, to wit:

"George S. Badders, President.  
Seward R. Graham, Sec. Treas.

Stein-Bloch Smart Clothes.

The Badders Company,  
Seventh and Kansas Avenue, Topeka, Kansas.

November 28,  
Nineteen Hundred Thirteen.

9 Spero, Michael & Son, 836 Broadway, New York City.

GENTLEMEN: Your favor of the 25th is at hand. We wish you would consider this matter further and ship the goods as we need them. We unfortunately looked at goods at too many places and when we narrowed our purchasers to what we wanted all parties we had seen reported sales and this of course looked like we were buying a lot of goods. As a matter of fact we cancelled about \$12,000.00 in clothing from our fall purchase and now find ourselves short. We bought from the following houses only in New York City (all others cancelled):

Cohen & Lang .....	862.50
Lipps Bros. ....	1941.75
J. Cohen Sons Co. ....	1873.50
Robert Kamber .....	1200.00
Nipson System .....	1200.00

All goods have been shipped with the possible exception of Nipson System, whose invoice we have not received. We can use your merchandise and for that reason did not cancel.

Will you not talk with Robert Kamber & Hoffman, J. Samuels &



Bros. and call Stein-Bloch at Rochester on long distance if in any doubt as to our responsibility.

Yours very truly,

THE BADDERS COMPANY,  
By GEO. S. BADDERS."

GSB-B

Said letter then and there being enclosed in an envelope, sealed and stamped with a sufficient number of United States postage stamps to entitle it to be transmitted through said mail and addressed to Spero, Michael & Son, 836 Broadway, New York; and this he, the said George S. Badders, did, contrary to the form of the statute in such case made and provided, and against the peace and dignity of the United States of America.

### Second Count.

And the Grand Jurors aforesaid, on their oath aforesaid, do further find and present that the said George S. Badders, on or about the 28th day of November, 1913, in the said division and district, and within the jurisdiction of said court, then and there being, did then and there and theretofore unlawfully, willfully, knowingly, fraudulently and designedly, devise a scheme and artifice to defraud Cohen & Lang, a corporation duly organized, incorporated and existing and doing business under the laws of the state of New York, and many and various other persons, partnerships, firms, and corporations, residents of the United States, which said persons, firms, partnerships and corporations are fully set out in the first count of this indictment, and are hereby made a part of this count, the same as if fully rewritten herein, of money and property of value, by means of numerous representations and promises, and false and fraudulent pretenses and representations, which said scheme and artifice to cheat and defraud is fully set out in the first count in this indictment, and made a part of this count, the same as if fully rewritten and set out herein.

And the Grand Jurors aforesaid, upon their oaths aforesaid, do further find and present that within the jurisdiction aforesaid, of the court aforesaid, for the purpose of promoting, carrying on and executing said scheme and artifice to defraud, and in attempting so to do, the aforesaid George S. Badders did then and there, and on or about the 28th day of November, A. D. 1913, with the intent as aforesaid, unlawfully and willfully and feloniously place and cause to be placed in the post office establishment of the United States at Topeka, Kansas, in said division and district, the same being a part of the post office establishment of the United States, and an authorized depository for mail, a certain letter, to be sent and delivered by the post office establishment of the United States, directed to Cohen & Lang, 707 Broadway, New York, said Cohen & Lang being the corporation named and described in the first count of this indictment, a true copy of said letter being as follows, to-wit:

Copy.

"George S. Badders, President.  
Seward R. Graham, Sec. Treas.

Stein-Bloch Smart Clothes.

The Badders Company,

Seventh and Kansas Avenue, Topeka, Kansas.

November Twenty-eighth,  
Nineteen Hundred Thirteen.

Spero, Michael &amp; Son, New York City.

GENTLEMEN: Your favor of the 25th at hand. We wish you would consider this matter further and ship the goods as we need them. We unfortunately looked at goods at too many places and when we narrowed our purchases to what we wanted all parties we had seen reported sales and this of course looked like we were buying a lot of goods. As a matter of fact we cancelled about \$1,200.00 in clothing from our fall purchases and now find ourselves short. We bought from the following houses only in New York City (all others were cancelled):

Cohen & Lang .....	\$862.50
Lipps Bros. ....	1941.75
J. Cohen Sons Co.....	1873.50
Robert Kamber .....	1200.00
Nipson System .....	1200.00

All goods have been shipped with the possible exception of Nipson System, whose invoice we have not received. We can use your merchandise and for that reason did not cancel it.

Will you not talk with Robert Kamber & Hoffman, J. Samuels & Bros., and call Stein-Bloch at Rochester on long distance if in any doubt as to our responsibility.

Yours very truly,

THE BADDERS COMPANY,  
By GEO. S. BADDERS.

(Signed)

GSB-B

GENTLEMEN: Above for your information.

THE BADDERS CO.  
G. S. B."

Said letter being enclosed in an envelope, sealed and stamped with a two-cent (2c.) United States postage stamp, the same being sufficient postage to entitle said letter to transmission through the United States Mails, and the address and superscription on said envelope being:

"The Badders Company,  
Seventh and Kansas Avenue,  
Topeka, Kansas.

Cohen & Lang,  
New York City.

707 Broadway.

12 And this he, the said George S. Badders, did contrary to the form of the statute in such case made and provided, and against the peace and dignity of the United States of America.

### Third Count.

And the Grand Jurors aforesaid, on their oath aforesaid, do further find and present that the said George S. Badders, on or about the 28th day of November, 1913, in the said division and district, and within the jurisdiction of said court, then and there being, did then and there and theretofore, unlawfully, willfully, knowingly, fraudulently, and designedly devise a scheme and artifice to defraud Lipps Bros., a partnership firm consisting of Philip Lipps, Charles Leon Lipps, and Bernard H. Lipps, doing business under the firm name and style of Lipps Bros., of New York City, New York, and many and various other persons, partnerships, firms and corporations, residents of the United States, which said persons partnerships, firms and corporations are fully set out in the first count of this indictment, and are hereby made a part of this count, the same as if fully rewritten herein, of money and property of value, by means of numerous representations and promises, and false and fraudulent pretenses and representations, which said scheme and artifice to cheat and defraud is fully set out in the first count in this indictment, and made a part of this count, the same as if fully rewritten and set out herein.

13 And the Grand Jurors aforesaid, upon their oaths aforesaid, do further find and present that within the jurisdiction aforesaid, of the court aforesaid, for the purpose of promoting, carrying on and executing said scheme and artifice to defraud, and in attempting so to do, the aforesaid George S. Badders did then and there, and on or about the 1st day of December A. D. 1913, with the intent as aforesaid, unlawfully and wilfully and feloniously place and cause to be placed in the post office establishment of the United States, at Topeka, Kansas, in said division and district, the same being a part of the post office establishment of the United States, and an authorized depository for mail, a certain letter, to be sent and delivered by the post office establishment of the United States, directed to Lipps Bros., 622 Broadway, New York City, said Lipps Bros., being the partnership named and described in the first count of this indictment, a true copy of said letter being as follows, to-wit:

"George S. Badders, President,  
Seward R. Graham, Sec. Treas.

Stein-Bloch Smart Clothes.

The Badders Company,  
Seventh and Kansas Avenue, Topeka, Kansas.

December First,  
Nineteen Hundred Thirteen.

Lipps Bros., 622 Broadway, New York City.

GENTLEMEN: Please send us at once by express thirty blue serge suits your No. 6883 in following sizes:

34	35	36	37	38	40
3	5	5	5	8	4

Yours very truly,

THE BADDERS COMPANY,  
By GEORGE S. BADDERS."

G. S. B—B.

Said letter then and there being enclosed in an envelope, sealed and stamped with a sufficient number of United States postage stamps to entitle it to be transmitted through said mail, and addressed to Lipps Bros., 622 Broadway, New York City; and this he, the said George S. Badders, did contrary to the form of the statute in such case made and provided, and against the peace and dignity of the United States of America.

And the Grand Jurors aforesaid, on their oath aforesaid, do further find and present that the said George S. Badders, on or about the 28th day of November, 1913, in the said division and district, and within the jurisdiction of said court, then and there being, did then and there and theretofore, unlawfully, willfully, knowingly, fraudulently, and designedly devise a scheme and artifice to defraud H. Kamber, of New York City, New York, doing business under the name of H. Kamber & Company, and many and various other persons, partnerships, firms, and corporations, residents of the United States, which said persons, partnerships, firms and corporations are fully set out in the first count of this indictment, and are hereby made a part of this count, the same as if fully rewritten herein, of money and property of value, by means of numerous representations and promises, and false and fraudulent pretenses and representations, which said scheme and artifice to cheat and defraud is fully set out in the first count in this indictment, and made a part of this count, the same as if fully rewritten and set out herein.

And the Grand Jurors aforesaid, upon their oaths aforesaid, do further find and present that within the jurisdiction aforesaid, of

the court aforesaid, for the purpose of promoting, carrying on and executing said scheme and artifice to defraud, and in attempting so to do, the aforesaid G. S. Badders, did then and there, and on or about the 2nd of December, A. D. 1913, with the intent as aforesaid, unlawfully and willfully and feloniously place and cause to be placed in the post office establishment of the United States at Topeka, Kansas, in said division and district, the same being a part of the post office establishment of the United States, and an authorized depository for mail, a certain letter to be sent  
 15 and delivered by the post office establishment of the United States, directed to H. Kamber & Co., 24 University Place, New York City, said H. Kamber & Co. being the same person named and described in the first count of this indictment, a true copy of said letter being as follows, to-wit:

"George S. Badders, President.  
 Seward R. Graham, Sec. Treas.

Stein-Bloch Smart Clothes.

The Badders Company, Seventh and Kansas Avenue, Topeka,  
 Kansas.

December 2nd, 1913.

H. Kamber & Co., 24 University Place, New York City.

GENTLEMEN: Of the swatches sent us Nov. 7th you may send the following:

Sizes. ....	34	35	36	37	38	40	42	44
Lot #4328	..	..	1	1	1	1	1	1
22285	..	1	1	1	1	1	..	..
4274	1	..	1	1	1	1	1	..
22499	1	1	1	1	1	..	1	..
4295	..	1	1	1	1	1	1	..
4299	..	1	1	1	1	1	..	..
22494	1	1	1	1	1	1	1	..
22496	..	..	1	1	1	1	1	1
Stout 22433	..	..	..	1	1	1	1	1
" 22509	..	..	..	..	1	1	1	1
" 22491	..	..	..	1	1	1	1	1
Serge 22490	2	3	3	5	5	3	2	2
Reg. 22509	..	..	1	1	1	1	..	..

A total of ninety suits. If you are out of any of above a reasonable substitution will be allowed. Please Rush M. D. Care Santa Fe.  
 Very truly,

THE BADDERS COMPANY.  
 GEORGE S. BADDERS."

Said letter then and there being enclosed in an envelope, sealed and stamped with a sufficient number of United States postage stamps to entitle it to be transmitted through said mail, and ad-



16 dressed to H. Kamber & Co., 24 University Place, New York City; and this he, the said George S. Badders did contrary to the form of the statute in such case made and provided, and against the peace and dignity of the United States of America.

### Fifth Count.

And the Grand Jurors aforesaid, on their oath aforesaid, do further find and present that the said George S. Badders, on or about the 28th day of November, 1913, in the said division and district, and within the jurisdiction of said court, then and there being, did then and there and theretofore, unlawfully, willfully, knowingly, fraudulently, and designedly devise a scheme and artifice to defraud Morris Glickman, of Philadelphia, Pennsylvania, doing business under the name of M. Glickman & Company, and many and various other persons, partnerships, firms, and corporations, residents of the United States, which said persons, partnerships, firms and corporations are fully set out in the first count of this indictment, and are hereby made a part of this count, the same as if fully rewritten herein, of money and property of value, by means of numerous representations and promises, and false and fraudulent pretenses and representations, which said scheme and artifice to cheat and defraud is fully set out in the first count in this indictment, and made a part of this count, the same as if fully rewritten and set out herein.

And the Grand Jurors aforesaid, upon their oaths aforesaid, do further find and present that within the jurisdiction aforesaid, of the court aforesaid, for the purpose of promoting, carrying on and executing said scheme and artifice to defraud, and in attempting so to do, the aforesaid George S. Badders, did then and there, and on or about the 2nd day of December, A. D. 1913, with the intent as aforesaid, unlawfully and willfully and feloniously place and cause to be placed in the post office establishment of the United States, at Topeka, Kansas, in said division and district, the same being a part of the post office establishment of the United States, and an authorized depository for mail, a certain letter to be sent and delivered by the post office establishment of the United States, directed to M. Glickman & Co., Philadelphia, Pa., said M. Glickman & Co. being the same person named and described in the first count of this indictment, a true copy of said letter being as follows, to-wit:

"George S. Badders, President.  
Seward R. Graham, Sec. Treas.

Stein-Bloch Smart Clothes.

The Badders Company,  
Seventh and Kansas Avenue, Topeka, Kansas.

December 2nd, 1913.

M. Glickman & Co., Philadelphia, Pa.

GENTLEMEN: Your invoice Nov. 4th. Please duplicate this order

for us. Also send us the best serge suit you have to offer at \$8.50 or \$9.00.

Yours very truly,

THE BADDERS COMPANY,  
By GEO. S. BADDERS.

G. S. B.—B.

If you have some close-outs in fancys, soft finish or worsteds at a price send swatches.

BADDERS CO."

Said letter then and there being enclosed in an envelope, sealed and stamped with a sufficient number of United States postage stamps to entitle it to be transmitted through said mail, and addressed to M. Glickman & Co., Philadelphia, Pa.; and this he, the said George S. Badders, did contrary to the form of the statute in such case made and provided, and against the peace and dignity of the United States of America.

#### Sixth Count.

And the Grand Jurors aforesaid, on their oath aforesaid, do further find and present that the said George S. Badders, on or about the 28th day of November, 1913, in the said division and district, and within the jurisdiction of said court, then and there being, 18 did then and there and theretofore, unlawfully, willfully, knowingly, fraudulently, and designedly devise a scheme and artifice to defraud Cohen, Goldman & Company, a co-partnership consisting of Hyman Cohen, and William Goldman, of New York City, New York, doing business under the name and style of Cohen, Goldman & Company, and many and various other persons, partnerships, firms, and corporations, residents of the United States, which said persons, partnerships, firms, and corporations are fully set out in the first count of this indictment, and are hereby made a part of this count, the same as if fully rewritten herein, of money and property of value, by means of numerous representations and promises, and false and fraudulent pretenses and representations, which said scheme and artifice to cheat and defraud is fully set out in the first count in this indictment, and made a part of this count, the same as if fully rewritten and set out herein.

And the Grand Jurors aforesaid, upon their oaths aforesaid, do further find and present that within the jurisdiction aforesaid, of the court aforesaid, for the purpose of promoting, carrying on and executing said scheme and artifice to defraud, and in attempting so to do, the aforesaid George S. Badders, did then and there, and on or about the 4th day of December, A. D. 1913, with the intent as aforesaid, unlawfully and willfully and feloniously place and cause to be placed in the post office establishment of the United States, at Topeka, Kansas, in said division and district, the same being a part of the post office establishment of the United States, and an authorized depository for mail, a certain letter to be sent and delivered by the post office establishment of the United States, directed to Cohen,

Goldmand & Co., Broadway and Fourth, New York City, said Cohen, Goldmand & Co. being the same co-partnership named and described in the first count of this indictment, a true copy of said letter  
 19 being as follows, to-wit:

"George S. Badders, President.  
 Seward R. Graham, Sec. Treas.

Stein-Bloch Smart Clothes.

The Badders Company,  
 Seventh and Kansas Avenue, Topeka, Kansas.

December Fourth, Nineteen Hundred Thirteen.

Cohen, Goldman & Co., Broadway at Fourth, New York City.

GENTLEMEN: Yours of December 1st. We appreciate fully the reason for the terms you suggest and under the circumstances will accept the coats for cash 9% off. Please ship half the coats giving us a line of sizes by express and let the balance come by freight.

Yours very truly,

THE BADDERS COMPANY,  
 By GEO. S. BADDERS.

We will be in the market for some trousers after our sale but will come to market on this.

BADDERS COMPANY."

Said letter then and there being enclosed in an envelope, sealed and stamped with a sufficient number of United States postage stamps to entitle it to be transmitted through said mail, and addressed to Cohen, Goldman & Co., Broadway at Fourth, New York City; and this he, the said George S. Badders, did contrary to the form of the statute in such case made and provided, and against the peace and dignity of the United States of America.

#### Seventh Count.

And the Grand Jurors aforesaid, on their oath aforesaid, do further find and present that the said George S. Badders, on or about the 28th day of November, 1913, in the said division and district, and within the jurisdiction of said court, then and there being, did  
 20 then and there and theretofore, unlawfully, willfully, knowingly, fraudulently, and designedly devise a scheme and artifice to defraud Rosenwald & Weil, a corporation of Chicago, Illinois, duly incorporated and existing under the laws of the state of Illinois, and many and various other persons, partnerships, firms, and corporations, residents of the United States, which said persons, partnerships, firms, and corporations are fully set out in the first count of this indictment, and are hereby made a part of this count, the same as if fully rewritten herein, of money and property of value, by means of numerous representations and promises, and false

and fraudulent pretenses and representations, which said scheme and artifice to cheat and defraud is fully set out in the first count in this indictment, and made a part of this count, the same as if fully rewritten and set out herein.

And the Grand Jurors aforesaid, upon their oath aforesaid, do further find and present that within the jurisdiction aforesaid, of the court aforesaid, for the purpose of promoting, carrying on and executing said scheme and artifice to defraud, and in attempting so to do, the aforesaid George S. Badders, did then and there, and on or about the 6th day of December, A. D. 1913, with the intent as aforesaid, unlawfully and willfully, and feloniously place and cause to be placed in the post office establishment of the United States, at Topeka, Kansas, in said division and district, the same being a part of the post office establishment of the United States, and an authorized depository for mail, a certain letter to be sent and delivered by the post office establishment of the United States, directed to Rosenwald & Weil, Chicago, Ill., said Rosenwald and Weil, being the same corporation named and described in the first count of this indictment, a true copy of said letter being as follows, to-wit:

21 "George S. Badders, President.  
Seward R. Graham, Sec. Treas.

Stein-Bloch Smart Clothes.

The Badders Company,  
Seventh and Kansas Avenue, Topeka, Kansas.

December Sixth, Nineteen Hundred Thirteen.

Rosenwald & Weil, Chicago, Ill.

GENTLEMEN: Please send two or three dozen smoking jackets similar to better quality previously ordered by us. We want only good stuff in sizes 36 38 40 heavy on 38 and 40 in Norfolk Models belted. If you have something good to close out you may send it.

Yours very truly,

THE BADDERS COMPANY,  
By GEO. S. BADDERS."

G. S. B.—B.

Said letter then and there being enclosed in an envelope, sealed and stamped with a sufficient number of United States postage stamps to entitle it to be transmitted through said mail, and addressed to Rosenwald & Weil, Chicago, Ill.; and this he, the said George S. Badders, did contrary to the form of the statute in such case made and provided, and against the peace and dignity of the United States of America.

#### Eighth Count.

And the Grand Jurors, aforesaid, on their oath aforesaid, do further find and present that the said George S. Badders, on or about

the 28th day of November, 1913, in the said division and district, and within the jurisdiction of said court, then and there being, did then and there and theretofore, unlawfully, willfully, knowingly, fraudulently and designedly devise a scheme and artifice to defraud The Ornstein & Rice Neckwear Company, of St. Louis, Missouri, a part-

22      nership, consisting of William Ornstein, B. E. Rice, Albert K. Baum, Nat. K. Baum, and Charles A. Werlheimer, doing business under the name and style of The Ornstein & Rice Neckwear Company, and many and various other persons, partnerships, firms, and corporations, residents of the United States, which said persons, partnerships, firms, and corporations are fully set out in the first count of this indictment, and are hereby made a part of this count, the same as if fully rewritten herein, of money and property value, by means of numerous representations and promises, and false and fraudulent pretenses and representations, which said scheme and artifice to cheat and defraud is fully set out in the first count in this indictment, and made a part of this count, the same as if fully rewritten and set out herein.

And the Grand Jurors aforesaid, upon their oath aforesaid, do further find and present that within the jurisdiction aforesaid, of the court aforesaid, for the purpose of promoting, carrying on and executing said scheme and artifice to defraud, and in attempting so to do, the aforesaid George S. Badders, did then and there, and on or about the 6th day of December, A. D. 1913, with the intent as aforesaid, unlawfully and willfully and feloniously place and cause to be placed in the post office establishment of the United States, at Topeka, Kansas, in said division and district, the same being a part of the post office establishment of the United States, and an authorized depository for mail, a certain letter to be sent and delivered by the post office establishment of the United States, directed to Ornstein & Rice, St. Louis, Mo., said Ornstein & Rice being the same partnership named and described in the first count of this indictment, a true copy of said letter being as follows, to-wit:

23      "George S. Badders, President.  
Seward R. Graham, Sec. Treas.

Stein-Bloch Smart Clothes.

The Badders Company,  
Seventh and Kansas Avenue, Topeka, Kansas.

December Sixth, Nineteen Hundred Thirteen.  
Ornstein & Rice, St. Louis, Mo.

GENTLEMEN: Please send us twenty dozen handkerchiefs in regular retail 15¢ quality that we can sell in sale at 9¢. Send Something you have to close-out if you have it.

Yours very truly,

THE BADDERS COMPANY,  
By GEO. S. BADDERS."

G. S. B.—B.

Said letter than and there being enclosed in an envelope, sealed and stamped with a sufficient number of United States postage stamps to entitle it to be transmitted through said mail, and addressed to Ornstein & Rice, St. Louis, Mo.; and this he, the said George S. Badders, did contrary to the form of the statute in such case made and provided, and against the peace and dignity of the United States of America.

### Ninth Count.

And the Grand Jurors aforesaid, on their oath aforesaid, do further find and present that the said George S. Badders, on or about the 28th day of November, 1913, in the said division and district, and within the jurisdiction of said court, then and there being, did then and there and theretofore unlawfully, willfully, knowingly, fraudulently, and designedly devise a scheme and artifice to defraud Cluett, Peabody & Company, a corporation duly organized and incorporated under the laws of the state of New York, and through its  
24 branch office, doing business in Kansas City, Missouri, and many and various other persons, partnerships, firms, and corporations, residents of the United States, which said persons, partnerships, firms, and corporations are fully set out in the first count of this indictment, and are hereby made a part of this count, the same as if fully rewritten herein, of money and property of value, by means of numerous representations and promises, and false and fraudulent pretenses and representations, which said scheme and artifice to cheat and defraud is fully set out in the first count in this indictment, and made a part of this count, the same as if fully rewritten and set out herein.

And the Grand Jurors aforesaid, upon their oath aforesaid, do further find and present that within the jurisdiction aforesaid, of the court aforesaid, for the purpose of promoting, carrying on and executing said scheme and artifice to defraud, and in attempting so to do, the aforesaid George S. Badders did then and there, and on or about the 8th day of December, A. D. 1913, with the intent as aforesaid, unlawfully and willfully and feloniously place and cause to be placed in the post office establishment of the United States, at Topeka, Kansas, in said division and district, the same being a part of the post office establishment of the United States, and an authorized depository for mail, a certain letter to be sent and delivered by the post office establishment of the United States, directed to Cluett Peabody & Co., Kansas City, Mo., said Cluett Peabody & Co. being the same corporation named and described in the first count of this indictment, a true copy of said letter being as follows, to-wit:

"George S. Badders, President.  
Seward R. Graham, Sec. Treas.

Stein-Bloch Smart Clothes.

The Badders Company,  
Seventh and Kansas Avenue, Topeka, Kansas.

25 December Eighth, Nineteen Hundred Thirteen.  
Cluett, Peabody & Co., Kansas City, Mo.

GENTLEMEN: Your favor of the sixth is at hand. We wrote you several days ago asking your indulgence until the 20th inst. and advised you later of our sale which together with an increase of \$25,000 in our Capital Stock which will be available after December 20th will place us in a position to not only take our discounts promptly but will allow us to anticipate as well.

Thanking you, we are

Yours very truly,

THE BADDERS COMPANY,  
By GEO. S. BADDERS."

G. S. B.-B.

Said letter then and there being enclosed in an envelope, sealed and stamped with a sufficient number of United States postage stamps to entitle it to be transmitted through said mail, and addressed to Cluett Peabody & Co., Kansas City, Mo.; and this he, the said George S. Badders, did contrary to the form of the statute in such case made and provided, and against the peace and dignity of the United States of America.

#### Tenth Count.

And the Grand Jurors aforesaid, on their oath aforesaid, do further find and present that the said George S. Badders, on or about the 28th day of November, 1913, in the said division and district, and within the jurisdiction of said court, then and there being, did then and there and theretofore, unlawfully, willfully, knowingly, fraudulently, and designedly devise a scheme and artifice to defraud The M. C. Lilley & Company, a corporation duly organized and incorporated under the laws of the state of Ohio, of Columbus, Ohio, and many and various other persons, partnerships, firms and corporations, residents of the United States, which said persons, partnerships, firms, and corporations are fully set out in the first count of this indictment, and are hereby made a part of this count, the same as if fully rewritten herein, of money and property of value, by means of numerous representations and promises, and false and fraudulent pretenses and representations, which said scheme and artifice to cheat and defraud is fully set out in the first count in this indictment, and made a part of this count, the same as if fully rewritten and set out herein.

And the Grand Jurors aforesaid, upon their oath aforesaid, do further find and present that within the jurisdiction aforesaid, of the



court aforesaid, for the purpose of promoting, carrying on and executing said scheme and artifice to defraud, and in attempting so to do, the aforesaid George S. Badders, did then and there, and on or about the 11th day of December, A. D. 1913, with the intent as aforesaid, unlawfully and willfully and feloniously place and cause to be placed in the post office establishment of the United States, at Topeka, Kansas, in said division and district, the same being a part of the post office establishment of the United States, and an authorized depository for mail, a certain letter to be sent and delivered by the post office establishment of the United States, directed to M. C. Lilley & Co., Columbus, Ohio, said M. C. Lilley & Co. being the M. C. Lilley & Co., the same corporation named and described in the first count of this indictment, a true copy of said letter being as follows; to-wit:

"George S. Badders, President.  
Seward R. Graham, Sec. Treas.

Stein-Bloch Smart Clothes.

The Badders Company,

Seventh and Kansas Avenue, Topeka, Kansas.

27 M. C. Lilley & Co., Columbus, Ohio.

GENTLEMEN: Please send two of your No. 172 in dark brown size 24 and one same 26; one each 17, 18, 19 of No. 439; one size 24 leather lined dark brown No. 180; one same 26"; one dark brown leather lined size 24 No. 136; one 15 and one 16 No. 429. Please Rush.

Yours very truly,

THE BADDERS COMPANY,  
By GEO. S. BADDERS."

G. S. B.-B.

Said letter then and there being enclosed in an envelope, sealed and stamped with a sufficient number of United States postage stamps to entitle it to be transmitted through said mail, and addressed to M. C. Lilley & Co., Columbus, Ohio; and this he, the said George S. Badders, did contrary to the form of the statute in such case made and provided, and against the peace and dignity of the United States of America.

Eleventh Count.

And the Grand Jurors aforesaid, on their oath aforesaid, do further find and present that the said George S. Badders, on or about the 28th day of November, 1913, in the said division and district, and within the jurisdiction of said court, then and there being, did then and there and theretofore unlawfully, willfully, knowingly, fraudulently and designedly devise a scheme and artifice to defraud the Hartman Trunk Company, a corporation, duly organized and



incorporated under the laws of the state of Wisconsin, and maintaining an office and place of business in the city of Chicago, Illinois, and many and various other persons, partnerships, firms and corporations, residents of the United States, which said persons, partnerships, firms, and corporations are fully set out in the first count

of this indictment, and are hereby made a part of this count, 28 the same as if fully rewritten herein, of money and property of value, by means of numerous representations and promises, and false and fraudulent pretenses and representations, which said scheme and artifice to cheat and defraud is fully set out in the first count in this indictment, and made a part of this count, the same as if fully rewritten and set out herein.

And the Grand Jurors aforesaid, upon their oath aforesaid, do further find and present that within the jurisdiction aforesaid, of the court aforesaid, for the purpose of promoting, carrying on and executing said scheme and artifice to defraud, and in attempting so to do, the aforesaid George S. Badders, did then and there, and on or about the 11th day of December, A. D. 1913, with the intent as aforesaid, unlawfully and willfully and feloniously place and cause to be placed in the post office establishment of the United States, at Topeka, Kansas, in said division and district, the same being a part of the post office establishment of the United States, and an authorized depository for mail, a certain letter to be sent and delivered by the post office establishment of the United States, directed to The Hartmen Trunk Co., Chicago, Ill., said The Hartman Trunk Co., being the same corporation named and described in the first count of this indictment, a true copy of said letter being as follows, to-wit:

"The Badders Company,

Seventh and Kansas Avenue, Topeka, Kansas.

December Eleventh, Nineteen Hundred Thirteen.

The Hartman Trunk Company, Chicago, Ill.

29 GENTLEMEN: Please send for personal use of writer one 36" trunk your No. 256 and one 36" your No. 296.

Yours very truly,

THE BADDERS COMPANY.  
By GEO. S. BADDERS."

G. S. B.-B.

Said letter then and there being enclosed in an envelope, sealed and stamped with a sufficient number of United States postage stamps to entitle it to be transmitted through said mail, and addressed to The Hartman Trunk Co., Chicago, Ill.; and this he, the said George S. Badders, did contrary to the form of the statute in such case made and provided, and against the peace and dignity of the United States of America.

## Twelfth Count.

And the Grand Jurors aforesaid, on their oath aforesaid, do further find and present that the said George S. Badders, on or about the 28th day of November, 1913, in the said division and district, and within the jurisdiction of said court, then and there being, did then and there and theretofore unlawfully, willfully, knowingly, fraudulently and designedly devise a scheme and artifice to defraud The Ely Walker Dry Goods Company, a corporation duly organized and incorporated under the laws of the State of Missouri, and many and various other persons, partnerships, firms and corporations, residents of the United States, which said persons, partnerships, firms, and corporations are fully set out in the first count of this indictment, and are hereby made a part of this count, the same as if fully rewritten herein, of money and property of value, by means of numerous representations and promises, and false and fraudulent pretenses and representations, which said scheme and artifice to cheat and defraud is fully set out in the first count in this indictment, and made a part of this count, the same as if fully rewritten and set out herein.

And the Grand Jurors aforesaid, upon their oath aforesaid, do further find and present that within the jurisdiction aforesaid, of the court aforesaid, for the purpose of promoting, carrying on and executing said scheme and artifice to defraud, and in attempting so to do, the aforesaid George S. Badders did then and there, and on or about the 29th day of December A. D., 1913, with the intent as aforesaid, unlawfully and willfully and feloniously place and cause to be placed in the post office establishment of the United States, at Topeka, Kansas, in said division and district, the same being a part of the post office establishment of the United States, and an authorized depository for mail, a certain letter to be sent and delivered by the post office establishment of the United States, directed to Ely Walker Dry Goods Co., St. Louis, Mo., said Ely Walker Dry Goods Co., being the same corporation named and described in the first count of this indictment, a true copy of said letter being as follows, to-wit:

"The Badders Company,

Seventh and Kansas Avenue, Topeka, Kansas.

December Twenty-ninth, Nineteen Hundred Thirteen.

Ely Walker Dry Goods Co., St. Louis, Mo.

GENTLEMEN: Please send by express  $\frac{1}{2}$  dozen pair woolen blankets 72 x 85. White or cream body Yellow or blue ends. \$6.00 to \$8.00 quality. Please rush.

Yours very truly,

THE BADDERS COMPANY,  
By GEO. S. BADDERS."

G. S. B.-B.

31 Said letter then and there being enclosed in an envelope, sealed and stamped with a sufficient number of United States postage stamps to entitle it to be transmitted through said mail, and addressed to Ely Walker Dry Goods Co., St. Louis, Mo.; and this he, the said George S. Badders, did contrary to the form of the statute in such case made and provided, and against the peace and dignity of the United States of America.

FRANCIS M. BRADY,  
*Assistant U. S. Attorney.*

*Witnesses.*

F. E. Rhinehart, Topeka, Kansas.  
 C. C. Coulson, Topeka, Kansas.  
 W. A. Byers, Topeka, Kansas.  
 George A. Clark, Topeka, Kansas.  
 Ira Burdick, Topeka, Kansas.  
 Mrs. Ira Burdick, Topeka, Kansas.  
 Ilif Felix, Topeka, Kansas.  
 W. B. Kirkpatrick, Topeka, Kansas.  
 S. E. Cobb, Topeka, Kansas.  
 Fred Voiland, Topeka, Kansas.  
 O. H. White, Topeka, Kansas.  
 D. J. August, Topeka, Kansas.  
 Arthur Mills, Topeka, Kansas.  
 Robert Stone, Topeka, Kansas.  
 G. T. McDermott, Topeka, Kansas.  
 Mrs. H. D. Wolf, 1158 College Ave., Topeka, Kansas.  
 B. R. Wheeler, Topeka, Kansas.  
 John W. Newell, Topeka, Kansas.  
 Samuel Barnum, Topeka, Kansas.  
 George P. Benson, Topeka, Kansas.  
 Theo. Muller, Topeka, Kansas.  
 George Thompson, Topeka, Kansas.  
 Elon S. Clark, Topeka, Kansas.  
 S. E. Cobb, Topeka, Kansas.  
 E. H. Anderson, Topeka, Kansas.  
 George Godfrey Moore, Topeka, Kansas.  
 Miss Edna McCarty, Topeka, Kansas.  
 Scott Hopkins, Topeka, Kansas.  
 Miss May Malone, Topeka, Kansas.  
 Charles W. Bower, Topeka, Kansas.  
 Charles H. Sessions, Secretary of State, Topeka, Kansas.  
 James Richardson, Topeka, Kansas.  
 Fred Dean, Topeka, Kansas.  
 L. E. Fennimore, Topeka, Kansas.  
 A. J. Mackey, Topeka, Kansas.  
 Chas. Cyphers, care Topeka Transfer Company, Topeka, Kansas.  
 John Holmes, " Topeka, Kansas.  
 Elmer Gordon, " Topeka, Kansas.  
 Jack McDonald, " Topeka, Kansas.

## Witnesses (con.).

- Floyd White, c/o Topeka Transfer Company, Topeka, Kansas.  
 William Deusler, " "  
 R. L. Thomas, " "  
 Miss Eva Bundy, " "  
 R. A. Obley, Postal Telegraph-Cable Co. " "  
 J. Adler, Syracuse, N. Y.  
 Herbert T. Spiesberger, 416 S. Franklin St., Chicago, Ill.  
 S. R. Boyd, Care Greenfield Brothers, Wichita, Kansas.  
 Geo. C. Guggenheim, care The Stein-Bloch Co., Rochester, New York.  
 E. G. Griffith, Mgr. Cluett, Peabody & Co., Kansas City, Mo.  
 S. R. Graham, Hiawatha, Kansas.  
 Mrs. S. R. Graham, Hiawatha, Kansas.  
 Herbert Dale (R. G. Dunn & Co.), Topeka, Kansas.  
 A. G. Dunham, Shreveport, La.  
 Edward F. Filbrook, care Postal Telegraph-Building, Kansas City, Mo.  
 S. Rowland, Topeka, Kansas.  
 Miss Myrtle Cohen, care Hartman Trunk Co., 207 West Jackson Block, Chicago, Ill.  
 Joseph Seligman, care Cohen, Goldman & Co., Broadway & 4th St. New York City, New York.  
 George L. Pauley, Topeka, Kansas.  
 Alfred L. Beck, 12 E. 14th Street, New York City, N. Y.  
 Morris Lang, 707 Broadway. " " "  
 Harry P. Lawson, care The M. C. Lilley and Company, Columbus, Ohio.  
 Howard Davis, care The M. C. Lilley & Company, Columbus, Ohio.  
 H. Kroll, 907 Southern Boulevard, New York City, N. Y.  
 Miss Lelia Hubbell, care Ornstein & Rice, Neckwear & Credit Dept., St. Louis, Mo.  
 Miss Hellen Cohen, 508 South Franklin St., Chicago, Ill.  
 Morris Glickman, care of Glickman & Co., Philadelphia, Pa.  
 Frank Mahoney, care Ely-Walker Dry Goods Co., St. Louis, Mo.  
 Henrietta Raffin, 622 Broadway, New York City, N. Y.  
 H. Kamber, " "  
 Hyman Cohen, " "  
 Philip Lipps, " "  
 Morris Glickman, " "  
 William Goldman, " "  
 Wm. Ornstein, St. Louis, Mo.  
 B. E. Rice, St. Louis, Mo.  
 M. C. Lilley, Columbus, Ohio.  
 Fred Robertson, U. S. Attorney, Topeka, Kansas.  
 Samuel Baum, Topeka, Kansas.  
 I. W. Levy, 707 N. Y.  
 Nat K. Baum, St. Louis, Mo.  
 James Donald, St. Louis, Mo.  
 Joseph Mieyer, Kansas City, Mo.

Alfred L. Beck, New York.  
 Job Little, Topeka, Kansas.  
 J. R. Mulvane, Topeka, Kansas.  
 George H. Hoyes, Topeka, Kansas.  
 O. N. Chesney, Topeka, Kansas.  
 Geo. S. Ferguson, Topeka, Kansas.  
 Morton Albaugh, Clerk of Court, Topeka, Kansas.

33      Endorsed: No. 4160. Bond \$5,000.00. J. C. P. District Court of the United States for the 1st Division of the Only District of Kansas. The United States, Plaintiff, vs. George S. Badders, Defendant. Indictment. Sec. 215 Penal Code, 1910. Using mails to defraud. Penalty—Fine not more than \$1,000.00 or imprisoned not more than five years or both. A true Bill. J. B. Lohmuller, Foreman. Filed April 22, 1914. Morton Albaugh, Clerk. Fred Robertson, U. S. Attorney, Topeka, Kansas, by Francis M. Brady, First Ass't U. S. Attorney, Topeka, Kansas.

34      In the District Court of the United States for the District of Kansas, First Division, April 22, 1914.

No. 4160.

THE UNITED STATES  
 vs.  
 GEORGE S. BADDERS.

*Order to Docket and Fixing Bond.*

It is ordered by the court that defendant's bond herein be, and the same is hereby, fixed in the sum of Five Thousand Dollars.

35      UNITED STATES OF AMERICA,  
*District of Kansas, ss:*

Know all men by these presents, That George S. Badders, as principal, and J. R. Mulvane, as sureties, are held and firmly bound unto the United States of America in the sum of Five Thousand Dollars, for the payment of which, well and truly to be made, we bind ourselves, our heirs, executors, and administrators.

The condition of the above Bond is, that, whereas, one George S. Badders, was, at the April term, A. D. 1914, of the United States District Court for the District of Kansas, indicted for using the mails in aid of a scheme to defraud in violation of section 215, Criminal Code, and the trial on said indictment continued to the October 1914 term of the United States District Court for the District of Kansas, to be held on the Second Monday in October, 1914.

Now, therefore, if the said George S. Badders shall be and appear in his own proper person before the district Court of the United States for the District of Kansas, at the next Term thereof, to be holden in the City of Leavenworth in said District, on Monday, the

12th day of October, A. D. 1914, and from time to time and Term to Term thereafter as said cause may be postponed, continued or remain undisposed of, and at such place as said Court may be held in accordance with law or the order of the Court and at which said cause may be called for trial, and not depart therefrom without leave of the said Court first had and obtained, then this Bond shall be null and void; otherwise to remain in full force and effect.

In witness whereof, We have hereunto set our hands and seals, this 14th day of April, A. D. 1914.

GEORGE S. BADDERS. [SEAL.]  
J. R. MULVANE. [SEAL.]

36 Signed in the presence of and acknowledged before me, this the 22nd day of April, A. D. 1914.

W. R. BARRETT,  
*Notary Public.* [SEAL.]

Commission expires Jan. 18, 1918.

Approved April 22, 1914.

JOHN R. HARRISON.

*U. S. Marshal,*

By B. F. FELNNIKEN, *Deputy.*

Endorsed: Case No. 4160. The United States vs. George S. Badders. Bond. \$5,000.00. For appearance at October Term of District Court, A. D. 1914. Filed this 23rd day of April, 1914, Morton Albaugh, Clerk.

37 In the District Court of the United States for the District of Kansas, First Division, April 24, 1914.

No. 4160.

THE UNITED STATES

vs.

GEORGE S. BADDERS.

*Order of Continuance.*

It is ordered by the court that the above entitled case be, and the same is hereby continued.

38 In the District Court of the United States, District of Kansas,  
First Division.

No. 4160.

UNITED STATES OF AMERICA, Plaintiff,

vs.

GEORGE S. BADDERS, Defendant.

*Application to Endorse Names on Indictment.*

The United States of America, by Fred Robertson, United States District Attorney, makes this, its application and asks the Court that it be permitted to endorse upon the indictment returned in this case, as witnesses on behalf of the United States, the names of:

I. W. Levy, 707 Broadway, New York City, New York;

Nat K. Baum, Care Ornsteine & Rice, St. Louis, Missouri.

James Donald, Care Ely Walker Dry Goods Company, St. Louis, Missouri.

Joseph Meyer, 908 Broadway, Kansas City, Missouri;

Alford L. Beck, 12 East 14th Street, New York City, N. Y.

The United States Attorney would show to the Court that these names and each and all of them were not endorsed upon the indictment at the time that it was returned by the Grand Jury because the United States District Attorney did not at that time know their correct names and that they were material witnesses. Each of said witnesses the said United States Attorney believes will give testimony of importance, which will be material on behalf of the United States.

The United States Attorney further states that on the 21st day of August, A. D. 1914, he mailed to Mr. D. R. Hite, attorney of record for above named defendant, and also to George S. Badders,  
39 the defendant, a copy of this application to endorse names, and advised said attorney for George S. Badders that this application would be presented to the Court on the 12th day of October, A. D. 1914 at the Court room at Leavenworth, Kansas, at the hour of ten o'clock A. M. or as soon thereafter as the same might be heard.

Wherefore, Applicant prays the Court for an order permitting the names of the witnesses above set forth, to be endorsed upon the indictment in this case.

FRED ROBERTSON,  
*United States Attorney.*  
FRANCIS M. BRADY,  
*Assistant.*

Endorsed: No. 4160. The United States, Plaintiff, vs. George S. Badders, Defendant. Application to Endorse Names of Witnesses on Indictment. Filed Sept. 22, 1914. Morton Albaugh, Clerk.

40 In the District Court of the United States for the District of Kansas, First Division.

No. 4160.

UNITED STATES OF AMERICA, Plaintiff,

vs.

GEORGE S. BADDERS, Defendant.

*Application to Endorse Name on Indictment.*

The United States of America, by Fred Robertson, United States District Attorney, makes this application and asks the Court that it be permitted to endorse on the indictment returned in this case, as a witness on behalf of the United States, the name of Samuel Baum, Topeka, Kansas, the same witness becoming necessary by reason of the absence of the witness David August, and it not being known that the witness David August could not be present at the trial until now, makes it now necessary to endorse the name of Samuel Baum thereon for the purpose of using him as a witness in this case.

The United States Attorney further states that said witness will give important and material testimony on behalf of the United States, and that on the 22nd day of September, A. D. 1914, there was mailed to Mr. D. R. Hite, Attorney of record for the above named defendant, a copy of this application to endorse the name of said witness upon the indictment, and notifying him that this application would be presented to the Court on the 12th day of October, A. D. 1914, at the hour of ten o'clock A. M. or as soon thereafter as convenient on said day before the United States District Court above named.

Wherefore, Applicant prays the Court for an order permitting the name of the witness, Samuel Baum, as above set forth, to be endorsed upon the indictment in this case.

FRANCIS M. BRADY,  
*First Ass't U. S. Attorney.*

41 Endorsed: No. 4160. In the District Court of the United States, District of Kansas, First Division. United States of America, Plaintiff, vs. George S. Badders, Defendant. Application to Endorse name on Indictment. Filed Sept. 23, 1914, Morton Albaugh, Clerk.



42 In the District Court of the United States for the District of  
Kansas, First Division.

No. 4160.

UNITED STATES OF AMERICA, Plaintiff,  
v.  
GEORGE S. BADDERS, Defendant.

*Demurrer to Indictment.*

Demurrer to the First Count.

And now comes the above named defendant and demurs to the first count of the indictment herein for the following reasons, to-wit:

I.

Because said first count does not set forth the facts claimed by the plaintiff to constitute the alleged transgression so distinctly as to advise this defendant of the charge which he has to meet.

II.

Because said count does not set forth the facts claimed by the plaintiff to constitute the alleged transgression so fully as to give this defendant a fair opportunity to prepare his defense.

III.

Because said count does not set forth the facts which the plaintiff claims constitute the alleged transgression so particularly as to enable this defendant to avail himself of a conviction or acquittal in defense of another prosecution for the same offense.

43

IV.

Because said count does not set forth the facts which the plaintiff claims constitute the alleged transgression so clearly that the court, upon an examination thereof, is able to determine whether or not under the law the facts there stated are sufficient to support a conviction.

V.

Because said count does not state facts sufficient to constitute an offense against the laws of the United States.

Demurrer to Second Count.

And said defendant demurs also to the second count of said indictment for the following reasons, to-wit:

## I.

Because said second count does not set forth the facts claimed by the plaintiff to constitute the alleged transgression so distinctly as to advise this defendant of the charge which he has to meet.

## II.

Because said count does not set forth the facts claimed by the plaintiff to constitute the alleged transgression so fully as to give this defendant a fair opportunity to prepare his defense.

## III.

Because said count does not set forth the facts which the plaintiff claims constitute the alleged transgression so particularly as to enable this defendant to avail himself of a conviction or acquittal in defense of another prosecution for the same offense.

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## IV.

Because said count does not set forth the facts which the plaintiff claims constitute the alleged transgression so clearly that the court, upon an examination thereof, is able to determine whether or not under the law, the facts there stated are sufficient to support a conviction.

## V.

Because said count does not state facts sufficient to constitute an offense against the laws of the United States.

## Demurrer to the Third Count.

And said defendant demurs also to the third count of said indictment for the following reasons, to-wit:

## I.

Because said third count does not set forth the facts claimed by the plaintiff to constitute the alleged transgression so distinctly as to advise this defendant of the charge which he has to meet.

## II.

Because said count does not set forth the facts claimed by the plaintiff to constitute the alleged transgression so fully as to give this defendant a fair opportunity to prepare his defense.

## III.

Because said count does not set forth the facts which the plaintiff claims constitute the alleged transgression so particularly as to enable this defendant to avail himself of a conviction or acquittal in defense of another prosecution for the same offense.

45

## IV.

Because said count does not set forth the facts which the plaintiff claims constitute the alleged transgression so clearly that the court, upon an examination thereof, is able to determine whether or not, under the law, the facts there stated are sufficient so support a conviction.

## V.

Because said count does not state facts sufficient to constitute an offense against the laws of the United States.

## Demurrer to the Fourth Count.

And said defendant demurs also to the fourth count of said indictment for the following reasons, to-wit:

## I.

Because said fourth count does not set forth the facts claimed by the plaintiff to constitute the alleged transgression so distinctly as to advise this defendant of the charge which he has to meet.

## II.

Because said count does not set forth the facts claimed by the plaintiff to constitute the alleged transgression so fully as to give this defendant a fair opportunity to prepare his defense.

## III.

Because said count does not set forth the facts which the plaintiff claims constitute the alleged transgression so particularly as to enable this defendant to avail himself of a conviction or acquittal in defense of another prosecution for the same offense.

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## IV.

Because said count does not set forth the facts which the plaintiff claims constitute the alleged transgression so clearly that the court, upon an examination thereof, is able to determine whether or not, under the law, the facts there stated are sufficient to support a conviction.

## V.

Because said count does not state facts sufficient to constitute an offense against the laws of the United States.

## Demurrer to the Fifth Count.

And said defendant demurs also to the fifth count of said indictment for the following reasons, to-wit:

## I.

Because said fifth count does not set forth the facts claimed by the plaintiff to constitute the alleged transgression so distinctly as to advise this defendant of the charge which he has to meet.

## II.

Because said count does not set forth the facts claimed by the plaintiff to constitute the alleged transgression so fully as to give this defendant a fair opportunity to prepare his defense.

## III.

Because said count does not set forth the facts which the plaintiff claims constitute the alleged transgression so particularly as to enable this defendant to avail himself of a conviction or acquittal in defense of another prosecution for the same offense.

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## IV.

Because said count does not set forth the facts which the plaintiff claims constitutes the alleged transgression so clearly that the court, upon an examination thereof, is able to determine whether or not, under the law, the facts there stated are sufficient to support a conviction.

## V.

Because said count does not state facts sufficient to constitute an offense against the laws of the United States.

## Demurrer to the Sixth Count.

And said defendant demurs also to the sixth count of said indictment for the following reasons, to-wit:

## I.

Because said sixth count does not set forth the facts claimed by the plaintiff to constitute the alleged transgression so distinctly as to advise this defendant of the charge which he has to meet.

## II.

Because said count does not set forth the facts claimed by the plaintiff to constitute the alleged transgression so fully as to give this defendant a fair opportunity to prepare his defense.

## III.

Because said count does not set forth the facts which the plaintiff claims constitute the alleged transgression so particularly as to enable

this defendant to avail himself of a conviction or acquittal in defense of another prosecution for the same offense.

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## IV.

Because said count does not set forth the facts which the plaintiff claims constitute the alleged transgression so clearly that the court, upon an examination thereof, is able to determine whether or not, under the law, the facts there stated are sufficient to support a conviction.

## V.

Because said count does not state facts sufficient to constitute an offense against the laws of the United States.

## Demurrer to Seventh Count.

And said defendant demurs also to the seventh count of said indictment for the following reasons, to-wit:

## I.

Because said seventh count does not set forth the facts claimed by the plaintiff to constitute the alleged transgression so distinctly as to advise this defendant of the charge which he has to meet.

## II.

Because said count does not set forth the facts claimed by the plaintiff to constitute the alleged transgression so fully as to give this defendant a fair opportunity to prepare his defense.

## III.

Because said count does not set forth the facts which the plaintiff claims constitute the alleged transgression so particularly as to enable this defendant to avail himself of a conviction or acquittal in defense of another prosecution for the same offense.

49

## IV.

Because said count does not set forth the facts which the plaintiff claims constitute the alleged transgression so clearly that the court, upon an examination thereof, is able to determine whether or not under the law, the facts there stated are sufficient to support a conviction.

## V.

Because said count does not state facts sufficient to constitute an offense against the laws of the United States.

## Demurrer to the Eighth Count.

And said defendant demurs also to the eighth count of said indictment for the following reasons, to-wit:

## I.

Because said eighth count does not set forth the facts claimed by the plaintiff to constitute the alleged transgression so distinctly as to advise this defendant of the charge which he has to meet.

## II.

Because said count does not set forth the facts claimed by the plaintiff to constitute the alleged transgression so fully as to give this defendant a fair opportunity to prepare his defense.

## III.

Because said count does not set forth the facts which the plaintiff claims constitute the alleged transgression so particularly as to enable this defendant to avail himself of a conviction or acquittal in defense of another prosecution for the same offense.

50

## IV.

Because said count does not set forth the facts which the plaintiff claims constitute the alleged transgression so clearly that the court, upon an examination thereof, is able to determine whether or not, under the law, the facts there stated are sufficient to support a conviction.

## V.

Because said count does not state facts sufficient to constitute an offense against the laws of the United States.

## Demurrer to the Ninth Count.

And said defendant demurs also to the ninth count of said indictment for the following reasons, to-wit:

## I.

Because said ninth count does not set forth the facts claimed by the plaintiff to constitute the alleged transgression so distinctly as to advise this defendant of the charge which he has to meet.

## II.

Because said count does not set forth the facts claimed by the plaintiff to constitute the alleged transgression so fully as to give this defendant a fair opportunity to prepare his defense.

## III.

Because said count does not set forth the facts which the plaintiff claims constitute the alleged transgression so particularly as to enable this defendant to avail himself of a conviction or acquittal in defense of another prosecution for the same offense.

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## IV.

Because said count does not set forth the fact- which the plaintiff claims constitute the alleged transgression so clearly that the court, upon an examination thereof, is able to determine whether or not, under the law, the facts there stated are sufficient to support a conviction.

## V.

Because said count does not state facts sufficient to constitute an offense against the laws of the United States.

L. I.

I.

Demurrer to the Tenth Count.

And said defendant demurs also to the tenth count of said indictment for the following reasons, to-wit:

## I.

Because said tenth count does not set forth the facts claimed by the plaintiff to constitute the alleged transgression so distinctly as to advise this defendant of the charge which he has to meet.

## II.

Because said count does not set forth the facts claimed by the plaintiff to constitute the alleged transgression so fully as to give this defendant a fair opportunity to prepare his defense.

## III.

Because said count does not set forth the facts which the plaintiff claims constitute the alleged transgression so particularly as to enable this defendant to avail himself of a conviction or acquittal in defense of another prosecution for the same offense.

52

## IV.

Because said count does not set forth the facts which the plaintiff claims constitute the alleged transgression so clearly that the court, upon an examination thereof, is able to determine whether or not, under the law, the facts there stated are sufficient to support a conviction.

## V.

Because said count does not state facts sufficient to constitute an offense against the laws of the United States.

Demurrer to the Eleventh Count.

And said defendant demurs also to the eleventh count of said indictment for the following reasons, to-wit:

## I.

Because said eleventh count does not set forth the facts claimed by the plaintiff to constitute the alleged transgression so distinctly as to advise this defendant of the charge which he has to meet.

## II.

Because said count does not set forth the facts claimed by the plaintiff to constitute the alleged transgression so fully as to give this defendant a fair opportunity to prepare his defense.

## III.

Because said count does not set forth the facts which the plaintiff claims constitute the alleged transgression so particularly as to enable this defendant to avail himself of a conviction or acquittal in defense of another prosecution for the same offense.

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## IV.

Because said count does not set forth the facts which the plaintiff claims constitute the alleged transgression so clearly that the court, upon an examination thereof, is able to determine whether or not, under the law, the facts there stated are sufficient to support a conviction.

## V.

Because said count does not state facts sufficient to constitute an offense against the laws of the United States.

Demurrer to the Twelfth Count.

And said defendant demurs also to the twelfth count of said indictment for the following reasons, to-wit:

## I.

Because said twelfth count does not set forth the facts claimed by the plaintiff to constitute the alleged transgression so distinctly as to advise this defendant of the charge which he has to meet.



## II.

Because said count does not set forth the facts claimed by the plaintiff to constitute the alleged transgression so fully as to give this defendant a fair opportunity to prepare his defense.

## III.

Because said count does not set forth the facts which the plaintiff claims constitute the alleged transgression so particularly as to enable this defendant to avail himself of a conviction or acquittal in defense of another prosecution for the same offense.

54

## IV.

Because said count does not set forth the facts which the plaintiff claims constitute the alleged transgression so clearly that the court, upon an examination thereof, is able to determine whether or not, under the law, the facts there stated are sufficient to support a conviction.

## V.

Because said count does not state facts sufficient to constitute an offense against the laws of the United States.

E. D. McKEEVER.  
JAMES H. HARKLESS.  
D. R. HITE.

Endorsed: No. 4160. In the District Court of the United States for the District of Kansas, First Division. United States, plaintiff, v. George S. Badders, Defendant. Demurrer to the Indictment. Filed Oct. 10, 1914, at 10:15 A. M. Morton Albaugh, Clerk.

55 In the District Court of the United States for the District of Kansas, First Division.

No. 4160.

UNITED STATES OF AMERICA, Plaintiff,

v.

GEORGE S. BADDERS, Defendant.

*Special Demurrer.*

The defendant George S. Badders demurs specially to each count of said indictment for that in each count it is alleged that defendant "placed and caused to be placed in the postoffice establishment of the United States, at Topeka Kansas" a certain letter described in each count and fails to set out the name of the person by or through whom

it is claimed the defendant "caused to be placed" in said establishment referred to the letter so referred to.

E. D. McKEEVER,  
JAMES H. HARKLESS,  
D. R. HITE,

*Attorneys for Defendant.*

Endorsed: No. 4160. In the District Court of the United States for the District of Kansas, First Division. United States of America, Plaintiff, v. George S. Badders, Defendant. Special Demurrer. Filed Oct. 10, 1914, at 10:17 A. M. Morton Albaugh, Clerk.

56 In the District Court of the United States for the District of Kansas, First Division.

No. 4160.

UNITED STATES OF AMERICA, Plaintiff,

v.

GEORGE S. BADDERS, Defendant.

*Motion to Quash Indictment.*

And now comes the above named defendant and after filing his demurrer to each count of the indictment herein pursuant to the rule of this court, that all motions and pleas to an indictment must be filed on or before the first day of the term, and without waiving his right to have said demurrer heard and determined, now respectfully moves the court to quash and abate the indictment herein, and each and every count thereof, for the following reasons, to-wit:

### I.

Because said indictment was not returned by a grand jury, summoned, impaneled, charged and sworn as provided by law; and in support of this ground this defendant offers to show that, the names of the pretended grand jurors who attended this court at the April, 1914, term thereof, were not drawn in the manner provided by law, for that, some of the persons whose names were drawn did not possess the qualifications necessary to sit as jurors in this court;

That some of the persons summoned as grand jurors were excused and no persons were selected or appointed or designated by the  
57 court as required by law to take the place of those who were excused;

That the persons summoned as grand jurors and who participated in the deliberations of the said pretended grand jury at said term were not qualified as jurors, for that, they had not been sworn as provided by law;

### II.

And said defendant further pleads to said indictment that on April 15, 1914, said District Court adjourned and the District Judge for

the District of Kansas, on or about that day left said district and thereafter until on or about April 22, 1914, was absent from said District of Kansas and during a part of said time sat with other judges in holding the District Court of the United States for one of the Districts of Iowa; that during said time there was no United States Judge or Court present or in session in the District of Kansas; that on April 17, 18, 20, 21 and 22, 1914, said pretended grand jury held pretended sessions, caused subpoenas to be issued, examined witnesses and documentary evidence, separated from each other, went away to their respective homes outside of the City of Topeka, Kansas, reassembled, deliberated, and voted, all with reference to the charges attempted to be described in said indictment, and in each count thereof;

### III.

Further pleading to said pretended indictment this defendant avers that the same was not returned into court in the manner provided by law and established rules; that said pretended indictment was not presented by the grand jury, but on April 22, 1914, some of the persons summoned in the manner hereinbefore described, appeared in the court room at Topeka, Kansas, and thereupon the judge of said court inquired of the person claiming to act as foreman  
58 whether he had any report to make, and thereupon said pretended indictment, with others, was by said person handed to the Assistant United States Attorney, then present in the Court room, and by him handed to the judge; that no roll of said persons pretending to act as a grand jury was called and no inquiry or other proceedings made or had than as alleged in this paragraph, and said persons pretending to act as such grand jury made no statement and gave no further indication than as herein stated, that the pretended indictment was an indictment against this defendant of said pretended grand jury; and, this defendant avers that said pretended indictment is not a valid and lawful indictment by a valid and lawful grand jury.

### IV.

This defendant further avers that of those who took part in the deliberations of said pretended grand jury relating to the pretended indictment herein some of them were not lawful grand Jurors, for that, said persons had not been sworn as grand jurors in the manner provided by law;

### V.

This defendant further avers that each count of said indictment is duplicitious, for that, in each of said counts, the said pretended grand jury attempts to charge this defendant with more than one distinct offense and said counts are so ambiguous and uncertain that they do not nor do any of them, advise the defendant of the transgression of which he is claimed by the plaintiff to be guilty, with sufficient clearness, or precision, to enable him to determine which, if any, of the alleged offenses attempted to be charged, he must prepare to answer.

## VI.

Because said indictment and each and every count thereof  
59 is duplicitous, for that, this court cannot determine therefrom whether said grand jury in each of said counts, attempts to charge this defendant with the offense of having mailed a letter for the purpose of executing of a scheme or artifice to defraud, or of having mailed a letter for the purpose of executing a scheme or artifice for obtaining property by means of false and fraudulent pretenses and promises.

## VII.

Because all of said counts, after the first, attempt to charge the same alleged transgression which it is claimed by the plaintiff is set out in the first count.

## VIII.

Because on or about March 18, 1914, this defendant was arrested on a warrant founded upon a complaint made before Honorable F. L. Campbell, United States Commissioner, a copy of which complaint is hereto attached, marked Exhibit A and made a part hereof; and on or about March 19, 1914, this defendant duly appeared before said commissioner and then and there duly waived preliminary examination of the alleged offense set out in said complaint, and, entered into a recognizance with proper surety, to appear at the April, 1914, term of this court, to be dealt with for the alleged transgression;

And this defendant has had no preliminary examination in respect to the alleged offense which the plaintiff claims in said indictment this defendant committed.

## IX.

This defendant further avers that the plaintiff herein cannot lawfully proceed against this defendant in view of the circumstances related in the immediately preceding paragraph hereof, except for  
60 the offenses attempted to be set out in said complaint, Exhibit A, for that, as to none of the offenses attempted to be charged in said indictment, has this defendant had any preliminary examination as required by law in such case.

## X.

Because the proceedings, including said pretended indictment, against this defendant are not agreeable to the Laws of the State of Kansas, in such cases made and provided, and are contrary thereto.

## XI.

Because said indictment and each count therein is so ambiguous, uncertain and imperfect that this defendant cannot prepare his defenses and cannot ascertain therefrom with reasonable certainty the charge or charges he has to meet.

## XII.

This defendant further pleads to said indictment that the same is pretended to be drawn under Section 215 of the Act of March 3, 1909, and that said section does not authorize the joinder of more than one offense in an indictment and the indictment herein attempts to divide and split up the alleged offense by attempting to state the same offense in separate counts.

E. D. McKEEVER,  
JAMES H. HARKLESS,  
D. R. HITE,  
*Attorneys for Defendant.*

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## EXHIBIT "A."

In the District Court of the United States for the District of Kansas,  
First Division.

No. 4160.

UNITED STATES OF AMERICA, Plaintiff,

v.

GEORGE S. BADDERS, Defendant.

THE UNITED STATES OF AMERICA,

*The District of Kansas, First Division, ss:*

On this 18th day of March, 1914, before me, F. L. Campbell, United States Commissioner for the District of Kansas, First Division, personally appeared E. G. Griffith, who, being by me first duly sworn, deposes and says, as follows:

On or about the 8th day of December, 1913, in the First Division of the United States District Court for the District of Kansas, one George S. Badders, having then and theretofore unlawfully, knowingly, fraudulently, designedly and feloniously, in violation of Section 215 of the Penal Code of the United States, devised a scheme and artifice to defraud many and various persons by divers and numerous false and fraudulent pretenses, representations and promises, to be effected by means of the post-office establishment of the United States, which said scheme and artifice to defraud was and is as follows:

That he, the said George S. Badders, who was then and theretofore interested in and a representative of a certain corporation known as The Badders Clothing Company, and upon  
62 numerous occasions refer-ed to as The Badders Company, which was then and theretofore and at all times herein mentioned, conducting a mercantile business in Topeka, Kansas, should pretend and represent that he was the managing officer and president of said corporation, The Badders Clothing Company; that said Badders Company was a legitimate, going concern, with large assets, having property to the extent and value of about \$90,000.00,

and amply able to pay all its bills and protect its creditors; that the capital stock of said corporation, which has theretofore been in the amount of \$35,000.00, had been increased in the sum of \$25,000.00, so that the said capital stock of said corporation would become and be in the amount of \$60,000.00, which said increased capital stock of \$25,000.00 had been fully subscribed for and would be paid in full so as to be available for the payment of the creditors of said corporation on and immediately after December 20th, 1913; that the debts of said corporation amounted to about \$40,000.00; that he, the said Badders, acting as the manager and officer of said corporation, did cause wholesale houses and jobbers dealing in and selling goods of the kind and character handled in the said store which was then and theretofore so operated by said Badders, to sell and deliver to the said corporation, upon credit, without paying therefor prior to the time of delivery thereof, large amounts of merchandise, consisting of clothing, gentlemen's furnishing goods and various other kinds of merchandise, of the amount and value of many thousands of dollars; that he, the said Badders, by thus obtaining many thousands of dollars in value of such merchandise and credit without paying for the same, did thereby gather into the said store in Topeka, Kansas, a large stock of valuable merchandise, which would be readily purchased by the public, the amount and value of which merchandise is to the affiant unknown; that

63 having thus obtained said merchandise, he, the said Badders, would sell and convert the same into money, in the sum and amount of about \$50,000.00; that he, the said Badders, should obtain said sum of money for himself by pretending that the said corporation, through a pretended Board of Directors, had declared certain dividends; that the corporation had allowed and should pay him certain sums of money for services which he had performed in the selling of capital stock of said corporation, in the managing of its mercantile business, and in the doing of various other things for said corporation; that he, the said Badders, should, through the said purported dividends, through the said purported compensation, and through the said alleged salary, and increased compensation as manager and officer of said corporation, appropriate to his own use and benefit the proceeds from the sale of the merchandise so obtained as aforesaid upon credit, and without paying therefor.

Affiant further says that in truth and in fact said The Badders Clothing Company did not at said time have assets or property of an amount larger than about \$40,000.00; that its debts were largely in excess of its assets; that although there had been a pretended increase of the capital stock of the said corporation in the sum of \$25,000.00, it was not in fact paid for in full, nor paid for at all by anyone, and was not subscribed for by anyone who was ready, able and willing to pay for the same; that the said \$25,000.00 of increased capital stock never was in fact paid for by anyone, and never did become available for the payment of creditors of said company; that the said George S. Badders, by thus fraudulently and falsely misrepresenting the assets and responsibilities of the said corpora-

tion, procured from many and various persons, firms and corporations, without intending to pay therefor, and with intent to  
 64 cheat, wrong and defraud the said persons, firms and corporations out of the merchandise aforesaid, of the amount and value of many thousands of dollars; that the said corporation did not and could not lawfully declare or pay dividends as aforesaid, said corporation at the time of payment of the said alleged dividends then being in an insolvent and failing condition; all of which he the said George S. Badders unlawfully and feloniously did with the intent then and there to cheat and defraud any and all persons, firms and corporations whosoever might be so induced as aforesaid to become victims of his said scheme and artifice to defraud.

Affiant further states, that within the jurisdiction aforesaid of the court aforesaid, for the purpose of promoting, carrying on and executing said scheme and artifice to defraud, and in attempting so to do, the aforesaid George S. Badders did then and there, and on or about the 8th day of December, 1913, with intent as aforesaid, unlawfully and wilfully and feloniously place and cause to be placed in the post-office establishment of the United States, at Topeka, Kansas, in said division and District, the same being a part of the post-office establishment of the United States, and an authorized depository for mail, a certain letter with postage fully prepaid thereon, to be sent and delivered by the post-office establishment of the United States, directed to Cluett, Peabody & Co., Kansas City, Mo., a copy of said letter being as follows, to-wit:

"George S. Badders, President.  
 Seward R. Graham, Sec.-Treasurer.

Steinbloch Smart Clothes.

The Badders Company,  
 Seventh and Kansas Avenue, Topeka, Kansas.

December Eighth, Nineteen Hundred Thirteen.  
 Cluett, Peabody & Co., Kansas City, Mo.

65 GENTLEMEN: Your favor of the 6th is at hand. We wrote you several days ago asking your indulgence until the 20th inst. and advised you later of our sale which together with an increase of \$25,000.00 in our Capital Stock which will be available after December 20th will place us in a position to not only take our discounts promptly but will allow us to anticipate as well.

Thanking you, we are  
 Yours very truly,

THE BADDERS COMPANY,  
 By GEORGE S. BADDERS."

G. S. B.—B.

And this he, the said George S. Badders, did contrary to the form of the statute in such case made and provided, and against the peace and dignity of the United States of America.



Affiant further says that he has reason to and does believe that George A. Clark, S. R. Boyd, Ira Burdick, C. C. Coulson, Ilif Felix, W. F. Kirkpatrick, S. E. Cobb, Fred Voiland, D. J. August, Arthur Mills, W. A. Byers, all of Topeka, Kansas, George C. Gugenheim, Rochester, N. Y., and E. G. Griffith, Kansas City, Mo., are material witnesses to the subject matter of this complaint.

E. G. GRIFFITH.

Sworn to before me and subscribed in my presence this 18th day of March, A. D. 1914.

[SEAL.]

F. L. CAMPBELL,  
*U. S. Commissioner.*

U. S. Commissioner F. L. Campbell will please issue a warrant on the within complaint for the arrest of George S. Badders.

FRED ROBERTSON,  
*U. S. Attorney.*

(This complaint was filed March 18, 1914.)

66      Endorsed: No. 4160. In the District Court of the United States for the District of Kansas, First Division. United States of America, Plaintiff, v. George S. Badders, Defendant. Motion to Quash Indictment. Filed Oct. 10, 1914, at 10:19 A. M. Morton Albaugh, Clerk.

67      In the District Court of the United States for the District of Kansas, First Division.

No. 4160.

UNITED STATES OF AMERICA, Plaintiff,  
v.  
GEORGE S. BADDERS, Defendant.

*Motion.*

And now comes the defendant above named and saving to himself all and all manner of rights under his several demurrers and motions to quash and abate the indictment herein, moves the court to require the plaintiff to state whether in respect of the allegation appearing in each count of said indictment that this defendant "placed or caused to be placed in the postoffice establishment of the United States at Topeka, Kansas," the several letters referred to respectively in said allegations, the plaintiff intends to offer proof that defendant "caused to be placed" in said postoffice establishment the said letters, or to rely on that part of said allegation charging that defendant "placed" said letters as therein alleged; and that if plaintiff states that proof may be offered that defendant "caused to be placed" in said postoffice establishment said letters or any of them, that plaintiff be required to state the name and address of the person or persons



by or through whom plaintiff claims defendant "caused to be placed" said letters and each and any of them in said postoffice establishment."

E. D. McKEEVER,  
JAMES H. HARKLESS,  
D. R. HITE,  
*Attorneys for Defendant.*

68.       Endorsed: No. 4160. In the District Court of the United States for the District of Kansas, First Division. United States of America, Plaintiff, v. George S. Badders, Defendant. Motion. Filed Oct. 10, 1914, at 10:21 A. M. Morton Albaugh, Clerk.

69       In the District Court of the United States for the District of Kansas, First Division.

No. 4160.

UNITED STATES OF AMERICA, Plaintiff,

v.

GEORGE S. BADDERS, Defendant.

*Petition for a Bill of Particulars.*

The Petition of George S. Badders the above named defendant, respectfully shows:

That on April 22, 1914, a purported true bill of indictment was filed in this court and cause in which your Petitioner is charged with alleged transgressions against the provisions of Section 215 of the Criminal Code; that to said purported true bill your Petitioner has filed his demurrers and has also filed his motion to quash and abate the same; that pursuant to the rule of this court, that demurrers, motions and dilatory pleadings levelled at an indictment must be filed on or before the first day of the term of this court next succeeding the term at which such indictment was filed, and, without waiving his right to have said demurrers and motion to quash and plea in abatement heard and determined, and without prejudice to this defendant's right to withdraw this petition if said demurrers or motion or plea, or either of them, are sustained, your petitioner avers that he cannot safely proceed to a trial of the purported accusations set out in said pretended indictment without a bill of particulars furnished by the plaintiff; and thereupon your Petitioner respectfully prays that the plaintiff be required to furnish a bill of particulars in which the plaintiff shall state the following:

1.

When and to what officer or agent of Spero, Michael & Son, the corporations mentioned on the first page of said indictment, it is claimed by the plaintiff that the defendant made representations, pre-

tenses and promises; stating what representation, pretense or promise, if any, was made or intended to be made to said person, whether the same or any of them were in writing, and if in writing, furnish a copy or copies thereof to the defendant.

2.

When and to what officer or agent of Cohen & Lang, the corporation mentioned on the first page of said indictment, it is claimed by the plaintiff that the defendant made representations, pretenses and promises; stating what representation, pretense or promise, if any, was made or intended to be made to said person, whether the same or any of them were in writing, and, if in writing, furnish a copy or copies thereof to the defendant.

3.

When and to what officer or agent of Rosenwald & Weil, the corporation mentioned on the first page of said indictment, it is claimed by the plaintiff that the defendant made representations, pretenses and promises; stating what representation, pretense or promise, if any, was made, or intended to be made, to said person, whether the same or any of them were in writing, and if in writing, furnish a copy or copies thereof to the defendant.

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4.

When and to what officer or agent of Cluett, Peabody & Company, the corporation mentioned on the second page of said indictment, it is claimed by the plaintiff that the defendant made representations, pretenses and promises; stating what representation, pretense or promise, if any, was made or intended to be made to said person, whether the same or any of them were in writing, and if in writing, furnish a copy or copies thereof to the defendant.

5.

When and to what officer or agent of M. C. Lilly & Company, the corporation mentioned on the second page of said indictment, it is claimed by the plaintiff that the defendant made representations, pretenses and promises; stating what representation, pretense or promise, if any, was made or intended to be made to said person, whether the same or any of them were in writing, and if in writing, furnish a copy or copies thereof to the defendant.

6.

When and to what officer or agent of the Hartmen Trunk Company, the corporation mentioned on the second page of said indictment, it is claimed by the plaintiff that the defendant made representations, pretenses and promises; stating what representations, pretense or promise, if any, was made or intended to be made to said person, whether the same if any of them were in writing, and if in writing, furnish a copy or copies thereof to the defendant.

## 7.

72 When and to what officer, partner, agent or employee of any firm or person claimed by the plaintiff to be unknown, the plaintiff claims the defendant made or intended to be made, representations, pretenses and promises, if any, stating the substance of any such representations, pretense, or promise; and, if in writing, furnish the defendant a copy thereof; and, also identify such firm or person by giving the residence and business or such other data as shall enable the defendant to identify such persons or firms with reasonable certainty.

## 8.

When and to what member of the partnership firm of Lipps Brothers, mentioned on the first page of said indictment, it is claimed by the plaintiff that the defendant made or intended to make any representation, pretense or promise, stating the substance of such representation, pretense or promise, if any; whether the same was made in writing or otherwise, and, if in writing, furnish the defendant with a copy of the same.

## 9.

When and to what member of Cohen, Goldman & Company, mentioned on the first page of said indictment, it is claimed by the plaintiff that the defendant made or intended to make any representations, pretense or promise, stating the substance of such representation, pretense or promise, if any; whether the same was made in writing or otherwise, and if in writing furnish the defendant with a copy of the same.

## 10.

When and to what member of the firm of H. Kamber & Company, mentioned on the first page of said indictment, it is claimed by the plaintiff that the defendant made or intended to make any representation, pretense or promise, stating the substance of such  
73 representation, pretense or promise, *stating the substance of such representation, pretense or promise*, if any; whether the same was made in writing or otherwise, and if in writing, furnish the defendant with a copy of the same.

## 11.

When and from whom it is claimed by the plaintiff that the defendant obtained any merchandise, consisting of clothing, men's furnishing goods and various other kinds of goods referred to on page three of said indictment.

## 12.

The names and addresses of "the various other merchants and business firms to whom it is alleged by the plaintiff on said page Three that the defendant "would sell some of said goods for less than

the cost price"; and also the times when plaintiff claims each of such sales, if any, were so made by defendant; also the names and addresses of "the parties" from whom plaintiff claims defendant received the goods which on said page Three plaintiff alleges defendant would sell to "various other merchants and business firms for less than cost"; and also the time or times when it is claimed by the plaintiff that the defendant received such goods.

## 13.

The time and particulars of "the pretended meetings of the board of directors of the said Badders Company," at which plaintiff claims (page Four) said board of directors voted for and declared dividends and increases of salary and commissions.

## 14.

That as to the allegation on page Four of said indictment that "he would ship some of the goods so received to other points  
74 and store them" the plaintiff be required to state when and from whom it is claimed defendant received the goods referred to; also the names of the places to which it is claimed such goods were shipped and also when and for how long and where said goods were stored.

## 15.

That as to the allegation on said page Four which reads: "and also take large amounts of valuable goods out of said store and have them removed from said place of business and dispose of them in various quantities to other merchants and not sell them in the ordinary place of business occupied by The Badders Company, as he would have and cause those from whom he received the goods to believe he would," that the plaintiff be required to state the kind and quality of such goods, if any; also the names of "the other merchants" referred to, if any; also when and by what means it is claimed the defendant had or caused others to believe, as alleged, and also the names of the persons whom he caused or had believe as stated; and also the time when and the persons from whom the defendant is claimed to have received the goods mentioned.

## 16.

That as to the allegation on page Four of said indictment, that defendant "would write letters to his many creditors whom he owed prior to the receiving and obtaining goods as aforesaid," the plaintiff be required to state the names and addresses of persons whom plaintiff claims were defendant's creditors; and also furnish to the defendant copies of the letters referred to in said allegation, if any; and also the names of persons from whom and the time when the plaintiff claims the defendant received and obtained the goods referred to in said allegation; that the plaintiff be required to  
75 state also the particulars as to when it is claimed the defendant received any goods and also the name and address of each

person from whom it is claimed such goods were received; and also the name and address of the person from whom and the time when the plaintiff claims the defendant intended to secure goods; and also the time or times when the plaintiff claims the defendant converted money to his own use; and also whose goods, if any, the plaintiff claims the defendant sold and converted the proceeds to his own use or intended to do so.

## 17.

That the plaintiff states the nature and particulars of the evidence upon which the plaintiff relies to establish the allegation on page Six of said indictment, that *plaintiff* mailed or caused to be mailed the certain letter therein referred to "for the purpose of promoting and carrying on and executing said scheme and artifice to defraud;" and also such particulars as to the same allegation on page Eight of said indictment concerning the mailing of the certain letter there referred to; and also the same as to the same allegation in subsequent counts concerning the mailing of the letter there referred to; to the end that defendant may prepare his defense to said allegation, and be apprized of the nature and particulars of the evidence and facts relied on by the plaintiff to show such purpose as to each alleged letter.

And the defendant, saving to himself his rights as aforesaid, most respectfully shows that without such information and particulars as hereinbefore mentioned, he cannot safely proceed with the preparation of his defense to said pretended accusations and indictment.

Wherefore, The defendant respectfully prays that an Order be made in this cause, directing the plaintiff to furnish the  
76 defendant a bill of particulars containing the particulars and information as herein requested.

E. D. McKEEVER,  
JAMES H. HARKLESS,  
D. R. HITE,  
*Attorneys for Defendant.*

Endorsed: No. 4160. In the District Court of the United States for the District of Kansas, First Division. United States of America, Plaintiff, v. George S. Badders, Defendant. Petition for a Bill of Particulars. Filed October 10, 1914, at 10:23 A. M. Morton Albaugh, Clerk.

77 In the District Court of the United States, District of Kansas,  
First Division.

No. 4160.

UNITED STATES OF AMERICA, Plaintiff,

vs.

GEORGE S. BADDERS, Defendant.

*Affidavit.*

UNITED STATES OF AMERICA,  
*The District of Kansas, ss:*

Fred Robertson, being first duly sworn, on oath says:

That he is now and for more than one year just last past has been United States Attorney for the District of Kansas; that upon September 14th, 1914, E. D. McKeever, one of the attorneys for the defendant, George S. Badders, presented to him duplicate copy of a motion to quash indictment in the above entitled case, which he, the said McKeever, then and there advised affiant would be filed later in the above entitled action, on behalf of said defendant, and which duplicate is in substance, if not in fact, an exact copy of the original motion to quash indictment filed in the above entitled proceeding upon October 10th, 1914.

Affiant further states that at the time said notice of motion to quash indictment was this given to affiant by the said attorney, E. D.

78 McKeever, he, the said McKeever, then and there said to this affiant, in substance, that the attorneys for defendant Badders might later file a motion to require the United States District Attorney to furnish a bill of particulars for the information of defendant. Affiant further states that he then and there advised said E. D. McKeever if there was any information of any sort in the possession or control of him, as such United States District Attorney, that the defendant or his counsel desired access to, that the same would be promptly and cheerfully furnished at any time. Affiant further states that at the said time and place, he advised the said McKeever that he, the said McKeever, and any other of the counsel of defendant, could at any and all times have access to any and all papers, exhibits, files, and documents of every kind and character pertaining to the said above entitled proceeding which in any way pertained thereto.

Affiant further states that neither the said defendant nor any of his counsel has ever made any request of him for information of the kind above referred to herein, except insofar as the petition for a bill of particulars filed in said cause October 10th, 1914, may be construed as such a request.

FRED ROBERTSON.

Subscribed and sworn to before me this 13th day of October, A. D. 1914.

[SEAL.]

MORTON ALBAUGH,  
*Clerk of the United States District Court  
for the District of Kansas.*

Endorsed: No. 4160. United States vs. Geo. Badders. Affidavit of Fred Robertson. Filed Oct. 13th, 1914, Morton Albaugh, Clerk.

79

No. 4160.

UNITED STATES OF AMERICA, Plaintiff,  
v.  
GEORGE S. BADDERS, Defendant.

*Journay Entry, Order Overruling Demurrer to Indictment, etc.*

October 13, 1914.

Be it remembered that on October 13, 1914, being one of the days of the regular October, 1914, term of this Court, this cause came on to be heard upon certain demurrers and motions, the Plaintiff appearing by United States Attorney Honorable Fred Robertson and Assistant United States Attorney Honorable Francis M. Brady, and the Defendant appearing in person, and by his counsel, James H. Harkless, Esq., E. D. McKeever, Esq., and D. R. Hite, Esq., and,

Thereupon came on to be heard the general and special demurrers filed by the defendant herein, and after hearing the arguments of counsel and being fully advised in the premises, it is by the Court ordered that said general demurrer be and the same was overruled, to which ruling the defendant then and there excepted; and thereupon, having heard the argument of counsel and being fully advised in the premises, it is by the court ordered that the said special demurrer be and the same was duly overruled, to which ruling the defendant then and there duly excepted; and,

Thereupon came on to be heard the motion of the defendant that the plaintiff be required to state by or through whom the plaintiff claims the defendant "caused to be placed" the letters severally mentioned in the several counts of said indictment herein, in the  
80 mails; and, thereupon the court, having heard the argument of counsel, and being fully advised in the premises, it is by the court ordered that said motion be and the same was duly overruled, to which ruling the defendant then and there duly excepted; and,

Thereupon came on to be heard the motion of the defendant to quash the indictment herein and the several counts thereof; and thereupon the defendant introduced evidence in support of certain allegations in said motion to quash; and thereupon the matters having been duly argued and the court being fully advised in the premises, it was by the court ordered that said motion to quash be and the same was duly overruled and denied, to which ruling of the court the defendant then and there duly excepted; and,



Thereupon came on to be heard the petition of the defendant herein for a bill of particulars, in opposition to which said United States Attorney filed his affidavit herein, which was duly considered by the court over the defendant's objections and exception, and thereupon the court having heard the argument of counsel and being fully advised in the premises, it was by the court ordered that said petition for a bill of particulars be and the same was denied, to which ruling of the court the defendant then and there duly excepted; and,

Thereupon having heard the suggestions of counsel, and being further advised, it was by the court duly ordered that this cause be and it was duly continued until the next regular term of this court to be held in January, 1915, at Kansas City, Wyandotte County, in the State of Kansas.

81 Be it remembered, That at the October 1914 Term of the said District Court of the United States for the District of Kansas, sitting in and for the First Division thereof, and on Tuesday, the thirteenth day of October, 1914, the above entitled cause came on to be heard before the Honorable A. S. Van Valkenburgh, Judge, on the motion of the defendant to quash.

The plaintiff, The United States, appeared by Messrs. Fred Robertson and Francis M. Brady, its Solicitors.

The defendant, George S. Badders, appeared in person and by his solicitors, Messrs. D. R. Hite, James H. Harkless and E. D. McKeever.

Mr. Hite: Defendant now offers to prove the facts as alleged in the second paragraph of his motion to quash.

Mr. Robertson: Let me see what those are. We object to the offer because incompetent, irrelevant and immaterial, and further, that as the record now stands it is an assumption of a thing as a fact which cannot be established as such.

The Court: Then you better take up your motion to quash and proceed as you see fit in establishing it.

Mr. Robertson: We will admit the court was in recess from day to day, but I will not admit the conclusions of counsel.

Mr. Hite: I am not asking you to admit my conclusions, but merely these facts: That the presiding Judge, and the only Judge of the District of Kansas, left Topeka, Kansas, on or about April 15, 1914, and that during his absence and while he was holding court in the District of Iowa that the Grand Jury remained in session and heard witnesses and examined witnesses and deliberated upon the charge in this indictment. Is that substantially true, Mr. Robertson.

82 The Court: I think it had better be shown from either witnesses, the record, or both, just actually what took place.

Mr. Hite: One of the difficulties is in calling Judge Pollock to the witness stand to testify about his being absent, and I want to avoid that if possible.

The Court: I suppose the record will show whether the court was absent.



Mr. Hite: Have you the record of that matter Mr. Albaugh?

Mr. Albaugh: The record is not here: I can give the facts in the case which I suppose will not be disputed.

The Court: Let Mr. Albaugh make that statement. Let the record show he is sworn.

MORTON ALBAUGH, called as a witness on behalf of defendant, having been first duly sworn, testifies, as follows:

Direct examination.

Questions by Mr. Hite:

Mr. Albaugh: As I recall it, Court met on the 15th, am I not right?

Mr. Hite: The thirteenth, Mr. Albaugh, it was Monday.

Mr. Albaugh: From Wednesday evening, the 15th, the court was adjourned from day to day, Thursday, Friday and Saturday, Judge Pollock leaving on Wednesday evening, as I understood it, to assist Judge Smith, as I recall it, and Judge McPherson, with certain work in Iowa.

Q. State, Mr. Albaugh, if you know, whether the Grand Jury called for that term remained in session at that time, during the period of Judge Pollock's absence?

A. That would be largely hearsay.

83 Mr. Robertson: I think we are prepared to admit that the Grand Jury were in session and continued in session up until the 22d, and including the 22d day of April, 1914.

The Court: Mr. Albaugh, when did Judge Pollock return?

Mr. Albaugh: He returned to Topeka on Monday, which would be the 20th, if these dates are correct now. It would be the 20th he returned, but he returned to the District before that time; he returned to Topeka on the 20th.

Mr. Robertson: Did he upon the 20th resume the trial of cases at Topeka?

A. He did.

Q. And continued trying cases up to and until the time the true bill in this case was returned?

A. He did.

Q. That was part of the regular April Term at Topeka, all that?

A. It was.

Questions by Mr. Hite:

Q. Mr. Albaugh, do you know, and if so, please state, whether the Grand Jury during the time of Judge Pollock's absence heard any witnesses and deliberated in any way upon the matters contained in the indictment in this case.

A. I do not.

Q. Let me state Mr. Albaugh, that according to the calendar which I now hold in my hand, the second Monday of April in this year was on the thirteenth?

A. Yes sir.

Q. Now, with that information, are you able to state whether Judge Pollock left—when Judge Pollock left the jurisdiction?

A. On the evening of the fifteenth as I recall it.

Q. And as I understand you, your recollection is that he returned the following Monday, April 20th, 1914?

A. To Topeka, yes sir.

Q. Is that correct?

A. That is my recollection.

Q. And I understand you to say, Mr. Albaugh, that during the time of his absence, as you understand, he was assisting in the trial of some case in Iowa, is that true?

84 A. That, of course, is hearsay.

Q. Do you get that from Judge Pollock himself?

A. I think that was announced.

Q. I will ask the Government if they doubt Judge Pollock was holding court with Judge Smith and Judge McPherson.

Mr. Robertson: There is no question about that.

Questions by the Court:

Q. You say the court was adjourned from day to day, Mr. Albaugh; by whom was it adjourned?

A. By the Marshal.

Q. By the Marshal?

A. Yes sir.

(Witness excused.)

FRANCIS M. BRADY, called as a witness on behalf of the defendant, having been first duly sworn, testifies, as follows:

Direct examination.

Questions by Mr. Hite:

Q. Mr. Brady, you are the Assistant United States Attorney for this District, are you not?

A. I am.

Q. You had charge of the Grand Jury work at Topeka, Kansas, April Term, 1914, of United States District Court?

A. I did.

Q. State, Mr. Brady, if you know of the circumstance of Judge Pollock being absent from Topeka after Wednesday, the fifteenth of April, 1914, for several days?

A. I remember of his being absent, as to whether two or three days of the court, I do not remember.

Q. Was the Grand Jury in session during his absence?

A. The Grand Jury went into session the first day of Court and continued until the 22d day of the month.

Q. State, Mr. Brady, whether any witnesses were examined by the Grand Jury with reference to the present indictment after Judge Pollock left Topeka during that period?

85 A. I think that there was but I wouldn't be sure; I don't remember the day we took up the case; I think there were several days the witnesses were examined in that case.

Q. During the absence of Judge Pollock?

A. I think so, but I wouldn't want to say so.

Q. That is your best recollection?

A. That is my best recollection of that fact, we continued the ordinary work; I know that the Badders case was not passed on by the Jury until after his return, I know that.

Q. Your best recollection, however, is that they remained in session and took the testimony of witnesses during Judge Pollock's absence, more or less?

A. Along during the week as we could get the witnesses in that case they were examined, and the principal number of witnesses in that case, as I recollect, were examined on Monday, the twentieth.

Q. Some were examined before?

A. I think so, I wouldn't want to say that, I think they were, my recollection is we did examine several of them, perhaps so, before Judge Pollock left.

Q. And some after he left, is that your best recollection?

A. That is my best recollection, yes sir.

Q. And that the Grand Jury continued its deliberations from day to day during his absence the same as when he was there?

A. I think they were in session every day except Saturday afternoon.

Q. Did the Grand Jury go home at any time, any of them go home during that period?

A. I don't know that, I heard some talk that some wanted to go, I didn't see them go. I paid no attention to where the Grand Jurors were from the hour of the adjournment until they convened on the next Monday morning. I saw some of them there and some I never saw, I don't know where they were.

Q. You don't know where they were?

A. No sir.

Q. Don't know whether any of them went away or not?

86 A. Not of my personal knowledge.

Mr. Robertson: Objected to as hearsay.

The Court: Well, I don't see as that is material. If the Judge had been there and they had chose to go home over Sunday, there was nothing to prevent them from doing so and there would have been no irregularity in that. It all gets back to the question whether his being away invalidates the proceeding. The Judge does not call the Grand Jury into court on an adjournment over Sunday and determine what they shall do in the meantime; but they regulate their own hours of convening and adjourning until finally discharged.

Mr. Hite: Then as I understand it, Your Honor rules that it is immaterial whether any of the jurors happened to go home, as I understand you, over this Sunday.

The Court: Yes, I would say that is immaterial.

Mr. Hite: Except to that, Your Honor.

Mr. Hite: Now we will take up the other matters connected with the motion to quash. It is suggested by Mr. Harkless there may be some question in Your Honor's mind as to whether witnesses were

examined by the Grand Jury during the absence of Judge Pollock. I would ask your Honor if there is any question in Your Honor's mind upon that point, as to there being witnesses examined, or if Your Honor's ruling is founded upon any theory there might not have been?

The Court: I am assuming there were; Mr. Brady, giving the best of his recollection, says there were.

Mr. Hite: The reason I asked Your Honor, there are a number of witnesses here who were at the Grand Jury at that time and I—

The Court: I think Mr. Brady's statement was, practically, and may be understood to be, to the effect there were some witnesses in this case examined during that period when Judge Pollock was out of the city.

87 Mr. Brady: My recollection is some were used each day, but I don't want to say so.

Mr. Hite: With that understanding, we will consider the proof on that matter to have gone to that point.

(Witness excused.)

MORTON ALBAUGH (recalled):

Direct examination.

Questions by Mr. Hite:

Q. Mr. Albaugh, you are the Clerk of the United States District Court for the District of Kansas, are you not?

A. I am.

Q. Do you recall the circumstance of the Grand Jury being summoned to attend the April Term, 1914, of that court?

A. I do.

Q. Did you in your official capacity administer an oath to the Grand Jury of any kind?

A. I did.

Q. Will you please state, if you can, what was the oath that you administered?

A. I can give it to you exactly, if you desire it.

Q. Be glad to have it?

A. Just incorporate it in the record.

Q. Just let me see it Mr. Albaugh?

A. The oath to the Foreman and what follows is the oath to the Grand Jurors.

Mr. Hite: Perhaps better be read into the record.

A. You, as foreman of the Grand Jury, do solemnly swear that you will diligently inquire into and true presentment make of all public offenses against the laws of the United States cognizable by this court, committed or triable within the First Division of the District of Kansas, of which you have or can obtain legal evidence. You will present no person through malice, hatred or ill will, nor leave any unpresented through fear, favor or affection or for any reward or the promise or hope thereof, but in all your presentments you will present the truth, the whole truth and nothing but the truth, according to the best of your skill and understanding.

88 Q. That oath you have just read Mr. Albaugh you administered to the Foreman?

A. The oath I have just read was administered to the Foreman, yes sir.

Q. Please state if you administered any other oath after you administered that oath?

A. To the other members, yes.

Q. What oath did you administer to the other members of the Grand Jury?

A. You, and each of you do solemnly swear that the same oath which your foreman has taken now before you on his part, you and each of you shall well and truly observe upon your parts, So Help you God.

Q. Have you stated all of the oath that was administered to the Grand Jury or any member of it Mr. Albaugh?

A. I have.

Q. Now, Mr. Albaugh, do you remember how many of the Grand Jury, how many persons were summoned to sit on the Grand Jury for that term?

A. Twenty three.

Q. Were there any of those persons summoned excused?

A. Two.

Q. That left twenty one?

A. Yes sir.

Q. Were there any persons selected by the court or designated in any way to take the places of those excused?

A. There were not.

Mr. Robertson: Objected to as immaterial.

Mr. Hite: May it please your Honor, that is the testimony we desire considered upon the proposition announced in the motion to quash that the Grand Jury was not properly sworn; and as a matter of convenience I will proceed with Mr. Albaugh as to another ground of the motion to quash.

Questions by Mr. Hite:

Q. Mr. Albaugh, were you present on the 22d day of April, 1914, at the time this indictment was filed?

A. I was.

89 Q. Do you recall where you got that indictment from, what person?

A. From Judge Pollock.

Q. You got it from Judge Pollock.

A. Yes sir.

Q. Do you know what, if anything, took place in the court room at the time that Judge Pollock handed you this indictment, or before that?

Mr. Robertson: Objected to as incompetent, irrelevant and immaterial. Your Honor, it strikes me that an indictment cannot be challenged except upon the oath of the defendant in support of a plea in abatement.

The Court: No question about that.

Mr. Robertson: And therefore I object to all of this line of stuff as immaterial, incompetent, irrelevant and immaterial.

The Court: This indictment bears upon its face the endorsement of having been filed in Court on the 22d day of April, 1914, so endorsed by the Clerk, properly endorsed by the Foreman. I suppose the record of the court shows such an indictment was received and filed?

A. It was.

Q. Was it received and filed in open court.

A. It was.

Mr. Hite: We think the record would have to speak for itself.

Q. Can you recall just what was said when the indictment was received and filed in open court.

A. No I cannot.

Mr. Robertson: Objected to as incompetent, irrelevant and immaterial, and challenging the doings of the Grand Jury without offering his oath in support of his contention.

The Court: Isn't this motion under oath?

90 Mr. Robertson: It is not, Your Honor.

The Court: The Court is not disposed to be technical about such matters, but of course a challenge of this kind must always be supported by oath.

Mr. Hite: Your Honor, we disagree with that; we say the oath of the defendant would not add anything to the weight of it, and the cases are otherwise.

The Court: I am not disposed to cut you off Mr. Hite from your presentation of this matter. You have gone into an inquiry here outside the record. Challenging the record by an inquiry from the clerk as to what transpired, and when other inquiries are made of the clerk as to what transpired, you immediately appeal to the record. Now it seems to me it is proper, the court will permit this inquiry, provided, of course the District Attorney shall always have opportunity to supply the record, if he desires it, if he conceives the record has not been correctly stated. I asked Mr. Albaugh to state whether that indictment was returned in open court; if he was there he can testify to that as a matter of his own knowledge.

Mr. Hite: I was just coming to that.

The Court: I think he may answer the question I asked.

Mr. Hite: I beg your pardon.

A. It was.

The Court: And with Judge Pollock presiding?

A. It was.

Q. Sitting upon the bench, the indictment was turned over to him, or submitted to him, I assume, by the foreman of the Grand Jury, upon his question if they were ready to submit their report?

A. I don't see what it amounts to, but if you want the practice in this court I will tell you. The indictments are passed from the

Foreman to the Judge; the question of the bond &c. is fixed, and he then passes them to the clerk.

91 Q. That is what you meant when you said you received it from Judge Pollock?

A. Exactly.

Questions by Mr. Hite:

Q. That was what was done in this case?

A. Yes sir.

Q. And that was all that was done; is all that was done with reference to the handing of the indictment to Judge Pollock, that the foreman of the Grand Jury handed it to Judge Pollock and Judge Pollock handed it to you?

A. I don't think directly the foreman did hand it to Judge Pollock, probably the messenger may have handed it.

Q. Was the roll of the grand jury called?

A. I don't think so.

Q. Has that ever been a practice in the court over there?

A. Never has.

Q. And your recollection of it is that was not done in this case?

Mr. Robertson: Objected to as immaterial.

The Court: I have stated that I will let it be shown just what was done.

Q. Was the Grand Jury polled in any way?

A. It was not.

Q. Was there any inquiry made in your hearing of the Grand Jury as to whether any of those papers handed by Judge Pollock to you were their true bills; did you hear anything of that kind?

A. I did.

Q. What was that?

A. I couldn't give the exact language.

Q. And who made that inquiry?

A. The Court.

Q. Of whom?

A. Of the Foreman.

Q. It is your recollection Mr. Albaugh, there was no polling of the Grand Jury and no roll call?

A. There was no roll call of the grand jury.

Q. And no polling of them, to ask each one of them if that was their bill? or presentment?

A. I think not.

Q. Nothing of that kind was done there Mr. Albaugh?

A. I think not.

92 (Witness excused.)

Mr. Hite: I think Your Honor, that is all of the evidence we desire to offer. The defendant will rest so far as his evidence in support of motion to quash.

The Court: I do not care to hear any argument on the motion to quash.



Mr. Robertson: I think it might be well, in view of what counsel has put in the record to offset any presumption that it might possibly have, to have Mr. Brady state whether or not all the grand jurors were present in court at the time this indictment was returned.

Mr. Hite: Objected to as incompetent, irrelevant and immaterial.

The Court: Overruled.

FRANCIS M. BRADY (recalled) as a witness on behalf of the government, having been first duly sworn, testifies, as follows:

Direct examination.

Questions by Mr. Robertson:

Q. You are Mr. Brady the Assistant United States Attorney?

A. Yes.

Q. And Mr. Brady I wish you would state to the court what you know about the presence of the grand jury in open court at the time the true bill in this case was returned?

Mr. Hite: Objected to as incompetent, irrelevant and immaterial.

The Court: Answer.

Mr. Hite: Except.

A. After the grand jury had finished hearing all the witnesses and was ready to report we met in the Grand Jury room, that has a door opening into the court room; we stayed there until after the time we had informed the Judge we were ready to report because of the fact one or two of the Grand Jurors had not yet appeared. When the Grand Jurors were counted and roll called by the Foreman of the Grand Jury, showing that parties were present, all the grand jurors were present, we opened the door leading into the Court Room and the entire Grand Jury, including myself, walked into the Court room and lined up at the bar of the court, in the presence of the Court, and the Judge asked the Foreman if ready to report, and the Foreman said they were. The Judge said "Hand up your report" or something to that effect, and the indictments were in the possession of the Foreman of the Grand Jury and were handed up; the Court counted the indictments, announced to the Grand Jury how many there were, and asked if that was correct, and the Grand Jury Foreman said it was. And after the fixing of bonds in the regular, ordinary routine of the court's orders, and passing them to the Clerk, and asking for the orders for capiases and so forth, the Grand Jury was finally discharged.

Q. Mr. Brady, at the time the indictments, including the true bill in this case, were returned in open court, was each and every grand juror who deliberated thereon present in court.

Question read.

A. On the Badders indictment?

Q. That is included in my question?

A. To the best of my recollection they were, I counted them and do not think I could possibly be mistaken.



## Cross-examination.

## Questions by Mr. Hite:

Q. Was the roll called of the Grand Jury in Court?

A. Not in the Court room, but before we went into the court room.

Q. Was the Grand Jury polled in the Court Room?

A. You mean by polling each grand juror was asked separately, it was not done.

Q. That is all.

(Witness excused.)

The COURT: I desire no argument on this motion. The motion to quash is overruled.

Mr. Hite: Defendant excepts.

94 Mr. Hite: "And now comes the defendant above named and saving to himself all and all manner of rights under his several demurrers and motions to quash and abate the indictment herein, moves the court to require the plaintiff to state whether in respect of the allegation appearing in each count of said indictment that this defendant "placed or caused to be placed in the postoffice establishment of the United States at Topeka, Kansas," the several letters referred to respectively in said allegations, the plaintiff intends to offer proof that defendant "caused to be placed" in said postoffice establishment the said letters, or to rely on that part of said allegation charging that defendant "placed" said letters as therein alleged; and that if plaintiff states that proof may be offered that defendant "caused to be placed" in said postoffice establishment said letters or any of them, that plaintiff be required to state the name and address of the person or persons by or through whom plaintiff claims defendant "caused to be placed" said letters and each and any of them in said postoffice establishment."

This is a motion addressed to the matter of the allegations in the indictment that the defendant placed or caused to be placed in the postoffice establishment of the United States at Topeka, Kansas, &c.

The Court: Motion overruled.

Mr. Hite: Defendant excepts.

The Court: Exceptions are, as of course, to every motion or demurrer that appears as a part of the record proper.

95 Mr. Hite: We take up our motion for a bill of particulars.

Then, as I understand it, Your Honor rules that the government upon our application for a bill of particulars is not to be required to state the names of the persons to whom it is claimed by the government that any misrepresentations or false promises were made, further than is stated in the indictment.

The Court: I think not in this case.

Mr. Hite: Defendant excepts.

The Court: Of course, I am making my ruling in view of the tender of the District Attorney to exhibit to you any matter which he has in his office in connection with the case which you desire to see. But so far as his putting it on record here, that makes it really a part of the pleading, by which he, in a certain sense, binds his

presentation of his case. A bill of particulars is, in a sense, a part of the pleadings.

Mr. Hite: It is, in a sense, Your Honor, because naturally the government, when required to state the details upon which the defendant asks that he be informed, so as to prepare for his trial, necessarily it must include, from the nature of things, some statement of what the government expects to show.

We have here another, where we ask, where the government alleges that the accused wrote many letters to his creditors, and does not undertake to identify those letters in any way, whatever, and in those letter- that he made certain representations and pretenses; we ask the government to furnish us with the names of the persons whom it is claimed by the government are creditors of the accused to whom he wrote these letters. Now, otherwise, I do not know how we can be prepared to meet that allegation.

The Court: You will always in that case have to be confronted with the letters and it will be susceptible of pretty accurate proof whether or not defendant wrote them or not; and I suppose  
96 there ought to be no difficulty in your ascertaining from your connection with this case, and his knowledge, who the creditors are.

Mr. Hite: It is not the creditors of the Badders Clothing Company; the allegation is he wrote to his creditors, the creditors of the accused, and in those letters, as I endeavored to point out in my argument, and I see I must have failed very badly, it was in those letters he made these representations with reference to the increased capital and with reference to the solvency or insolvency of the company. All we want to know is, who are these creditors that you refer to as creditors of the accused and not of the Badders Company.

The Court: Are you able to furnish that Mr. District Attorney?

Mr. Robertson: Your honor, they are trying to make a distinction where there is no difference.

The Court: Well there is an allegation to the effect that such letters in this regard were sent out.

Mr. Robertson: Whatever we have they can see.

Mr. Hite: In view of the United States Attorney's offer, I will ask him if he will now furnish us with the names of the persons referred to in the indictment as creditors of the defendant to whom he wrote letters, substantially stating that the Badders Company had increased its capital stock, or the capital stock would be paid up, and that it was able to pay its debts. If he will, that will answer so much of the application as I have made.

Mr. Robertson: Your Honor, I do not know whether in Your Honor's District the District Attorney is required to place upon the indictment the names of the witnesses.

The Court: Yes, he is.

Mr. Robertson: I take it that practice obtains as an answer and a reason why a request like the one just made should not be made.

97 The Court: I do not see any list of witnesses upon this.

Mr. Robertson: The last page, inside.

The Court: Well, of course, here is a very liberal display of witnesses. Are these purely Grand Jury witnesses or witnesses expected to be witnesses independently of the Grand Jury witnesses.

Mr. Robertson: Those are Grand Jury witnesses but witnesses that will be used here too.

The Court: Do I understand the practice of the court is to limit you to witnesses appended in this way?

Mr. Robertson: We are limited to the witnesses that are either on the indictment when filed, or such names as are properly added under the practice of this court thereafter.

The Court: Thereafter would mean now?

Mr. Robertson: Yes.

The Court: That would not cover all that might be brought here to confront the defendant.

Mr. Robertson: Coming to that now, Your Honor, there are a few more witnesses, not a very large number, which the government has an application to endorse the names of upon the indictment, and about a month ago, a notice, duly made, and given to the defendant and his counsel, perhaps over a month ago, of who these parties are, where they reside, their street number &c., which is the practice in this court.

The Court: That is designed to and does furnish the defendant with a knowledge of the sources from which the testimony to be relied upon by the government is to come, and very largely covers all matters of this sort. However, I am proceeding on the theory that you have tendered, and as you said you desired the court to consider that, an examination of such matters as you had that  
98 might be desired. Now the desire is expressed the defendant should know of what parties you have in mind and rely upon as the creditors of Badders to whom he made these specific representations, and I was presuming, under your tender, you are willing to give it to him.

Mr. Robertson: Let me understand the request of counsel.

Mr. Hite: It is embodied in the bill of particulars.

Mr. Robertson: It would be utterly impossible, Your Honor, for any one to comply with this bill of particulars.

The Court: This Court has found no way out, except item by item; for the moment an agreement is attempted there is what I call some evidence of side-stepping.

Mr. Robertson: As far as I am concerned they are welcome to anything that I have if they want to inspect it.

Mr. Hite: Then we would like to have you furnish us for our inspection, Mr. Robertson, at some convenient time and place, such information as you have of the names and addresses of the various merchants and firms—

Mr. Robertson: I have prepared an affidavit here and I will file it, which I think will save a little time. Counsel does not seem willing to accept courtesy and good faith, and I know it is offered in good faith. (Mr. Robertson filing affidavit.) That is an affidavit I made the offer and have had a disposition to fully keep it good up to this moment.

(The Court examining the affidavit.)

Mr. McKeever: If Your Honor please, I will just state I went over to the Government and stated what we would do, the policy we would pursue would be first to file a demurrer and then a motion to quash and a motion for a bill of particulars, and that they would be filed by the first day of the term as was required. I had no bill of particulars with me at that time and at that time we had not prepared our bill of particulars and could not present it to Mr. Robertson. Mr. Robertson did say anything he had in the office we were welcome to, but he tendered nothing specific because I had nothing in the way of a bill of particulars to call to his attention. I understand the right to a bill of particulars, is a matter of right, which in proper time we would have a right to, if we asked for the proper things. That was my understanding; and Mr. Robertson did make the hospitable and courteous remark, anything he had about the office we could have, and to make ourselves at home, as far as that was concerned. So that was the colloquy that took place in Mr. Robertson's office at that time. The bill of particulars was not drawn until afterwards, and my purpose was to advise him what would be done here in order he might not be taken by surprise or any advantage taken of him in any way.

Mr. Robertson: I will call your Honor's attention to the unreasonableness of this request. Now counsel who is arguing this for the defendant knows, if his client has advised him correctly, that perhaps any admissions that we can introduce here, that he refers to, consists of a letter which letter was addressed to a corporation; now, for us to undertake to tell Your Honor who in New York City, Philadelphia, Rochester, St. Louis, Chicago, and in all these various cities we have brought these men to testify to these things, undertake to tell just where received, these other letters they want to look at, I can't do it because I don't know anything about it. I couldn't possibly comply with it if Your Honor made the order, but I have the letters, and they can have them, if they are in good faith, and will accept them.

Mr. Hite: That responds precisely to the request in the petition, that if these were in writing we be furnished with the writing.

The Court: I do not think the District Attorney should be required to furnish copies of all these things; they are voluminous, but he has offered—his witnesses are here, his evidence is here, if you desire to inspect what he has upon any line of this sort he will let you see it.

Mr. Hite: That will be perfectly satisfactory if I understand from the United States Attorney his representations lie in these letters.

The Court: But for him to get up here and set out specifically what he means by every allegation, and what he is to be bound by, I do not feel he should do that; but if there is something you want to know about, which he is supposed to have, and it turns out he does have, he is willing to let you see it. I believe that will cover the whole thing.

Mr. Robertson: There are a few conversations Mr. Badders had we

will want to introduce in evidence, with persons whose names and street addresses they have had all the time.

Mr. Hite: Can't you state, Mr. Robertson, in answer to this bill of particulars, the names of those gentlemen? I don't ask you to state what the conversation was, but whether those are the people to whom you claimed these representations were made, as representatives of these various concerns.

Mr. Robertson: The names are either on the indictment or in the list.

The Court: The names and addresses are on the indictment and of course I assume that parties know what their relations to these different firms is; if it is desired the District Attorney can show you from these names here who belonged to different firms, and they will be interrogated generally as to what they know about the transaction as connected with their firm.

Mr. Hite: It seems we are making progress because that is just what we ask here, to have the United States Attorney indicate to what person, and, if it is in writing,—I understand the  
101 United States Attorney cannot—

The Court: I do not suppose you can ask the District Attorney shall specify what he expects to show by any particular witness.

Mr. Hite: Not at all. All I ask is for him to indicate the person, that we cannot distinguish from his witnesses.

The Court: If you don't happen to know from this list in the indictment with what firm a particular witness is connected, what connection his testimony will appear, that, of course, I know the District Attorney, or his assistant, both know and no doubt they will be quite willing to furnish you with that.

Mr. Robertson: Very glad to do it.

Mr. Hite: That is all we ask in here. Now, we ask in another place—

The Court: I thought that was all you asked in all your bill of particulars. I think that covers about all of any legitimate bill of particulars.

Mr. Robertson: I object, Your Honor, to this bill of particulars being heard until it is verified by the defendant.

Q. The Court: No, I will hear it, proceed.

Mr. Hite: It is alleged in the indictment there were pretended meetings of the Board of Directors of the Badders Clothing Company and it seems to me Your Honor it is important to this accused that he should be advised, something at least, with relation to the time when it is claimed that these meetings were held with reference, not the dates, but with reference to this transaction, whether before or after, in order that we may be able to identify what is meant by the government.

The Court: I suppose any meetings of the Board of Directors you had are recorded, are they not, in the minute book?

Mr. Hite: I can only take refuge in what I have said be-  
102 fore, we are entirely ignorant.

The Court: Entirely ignorant of any wrong, but not entirely ignorant of the meetings of Board of Directors of which your

client was President; they may not have been at all criminal, but I suppose he participated in the actions of his Board of Directors if he had anything to do with them.

Mr. Hite: When we plead not guilty to this indictment, it would put in issue as to whether this man was ever present.

The Court: This is a question of what might reasonably be presumed to have been within your knowledge.

Mr. Hite: Then, as I understand, Your Honor thinks that is not a proper matter?

The Court: I think not. If there is a minute book which shows the meetings of the Board of Directors, and in the possession of the District Attorney, he, of course, may show it to you.

Mr. Hite: I would ask the United States Attorney if he has any record of any such meeting or meetings.

Mr. Robertson: We have no record and the counsel knows we have not. The counsel, Your Honor, has tried all these facts in a bankruptcy case in this District and he has a record of that, and I have a record in my office, and that will tell him all about the directors' meetings.

The Court: I suppose recourse could be had to directors to prove a directors' meeting.

Mr. Hite: I understand the United States Attorney in answer to our request that we be given further particulars concerning the allegation defendant would write letters to his creditors &c., that he means by that allegation creditors of the Badders Company. Is that correct?

103 Mr. Robertson: I do not think it is necessary for me to be interrogated as to what the indictment means.

Mr. Hite: If it be, Your Honor, these are letters written by the accused to his creditors, we think we should be entitled to know who his creditors are that are referred to in this indictment.

The Court: It has already been referred to, that the parties he intends to produce are parties whose names appear on the indictment, or that shall be added to the indictment, they will be confined to that, necessarily.

Mr. Hite: We except to the ruling of the court.

We ask that we be advised of the nature of the evidence upon which the plaintiff will rely for the purpose of showing that the letter in count one was mailed for the purpose of carrying out or executing the scheme alleged in the indictment.

The Court: Overruled.

Mr. Hite: Defendant excepts.

And we make the same request with reference to the letter referred to in each of the counts.

The Court: Overruled.

Mr. Hite: Defendant excepts.

The Court: I think that so far as all requirements of the defendant are concerned with respect to the bill of particulars that have been brought to the attention of the court, that they will be conserved by the offer of the District Attorney for the inspection of such documents, letters, and other evidence, coupled with names of witnesses

upon the indictment, and to be placed upon the indictment, as will bring home to the defendant knowledge of the sources of testimony which the government expects to introduce, and that is the basis of my ruling upon this motion.

104 And now in furtherance of justice and that right may be done the defendant presents his foregoing bill of exceptions in this cause and requests that the same be settled and allowed and signed and certified by the judge as provided by law.

JAS. H. HARKLESS,

D. R. HITE,

E. D. McKEEVER,

*Attorneys for Defendant.*

Thereupon the defendant tenders this his bill of exceptions to the action of the court in the various particulars therein set forth, which is now signed, sealed and made a part of the record of this case.

Done this May 22nd, 1915.

ARBA S. VAN VALKENBURGH, *Judge.*

May 21, 1915.

The above appears O. K.  
ROBERTSON.

Endorsed: In the District Court of the United States for the District of Kansas, First Division. The United States v. George S. Badders. No. 4160. Transcript of Oral Testimony and proceedings on motion of defendant to quash, for bill of particulars, and another motion. Leavenworth, Kansas, October 13th, 1914, before Honorable A. S. Van Valkenburgh, Judge. Filed May 24, 1915. Morton Albough, Clerk.

105 In the District Court of the United States, District of Kansas  
First Division.

No. 4160.

UNITED STATES OF AMERICA, Plaintiff,

VS.

GEORGE S. BADDERS, Defendant.

*Application to Endorse Names on Indictment.*

The United States of America, by Fred Robertson, United States District Attorney, makes this application, and asks the Court that plaintiff be permitted to endorse on the indictment returned in this case, as witnesses on behalf of the United States, the names of:

John R. Mulvane, Job Little and Geo. H. Hoyes all of Topeka, Kansas, whose name- was inadvertently omitted from the list of witnesses endorsed upon said indictment;



Geo. S. Ferguson, Policeman, Topeka, Kansas, who was not known to be a material witness until about the 25th day of December, 1914.

The United States Attorney states that said witnesses will give important and material testimony on behalf of the United States, and that the defendant and his attorney had notice of the names of these witnesses, with the exception of Geo. S. Ferguson, for a long time prior to the making and filing of this motion, and that on the first day of January, A. D. 1915, there was mailed to Mr. D. R. Hite, attorney of record for the above named defendant, a copy of this application, notifying him that this application would be presented to the Court on the 11th day of January, A. D. 1915 at the 106 hour of ten o'clock A. M., or as soon thereafter as might suit the convenience of the above named Court.

Wherefore, the applicant prays the court for an order permitting the names of the witnesses, as above set forth, to be endorsed upon the indictment in this case.

FRANCIS M. BRADY,  
*First Assistant United States Att'y.*

Endorsed: No. 4160. United States of America, Plaintiff, vs. George S. Badders, Defendant. Application to Endorse Names on Indictment. Filed January 4, 1915. Morton Albaugh, Clerk.

107 In the District Court of the United States for the District of Kansas, First Division.

No. 4160.

UNITED STATES OF AMERICA, Plaintiff,  
vs.  
GEORGE S. BADDERS, Defendant.

Now on this 9th day of January 1915 it is ordered by the court that the time for filing a term bill of exceptions, preserving for review the testimony taken in the above case on the motion to quash the indictment in the above cause at the October term last of said court at the city of Leavenworth, Kansas, be and the same is hereby extended for a period of ninety (90) days from this date.

ARBA S. VAN VALKENBURGH, *Judge.*

Endorsed: No. 4160. United States of America, vs. George S. Badders. Order Extending time for filing Bill of Exceptions. Filed January 9, 1915. Morton Albaugh, Clerk.



108 In the District Court of the United States for the District of  
Kansas, First Division.

No. 4160.

UNITED STATES OF AMERICA, Plaintiff,

vs.

GEORGE S. BADDERS, Defendant.

*Petition of the Defendant to Postpone the Time of Trial.*

The petition of George S. Badders, defendant, herein, respectfully shows:

I.

That the indictment in this action was filed in this court on April 20, 1914. That it contains twelve counts, and charges the defendant with using the mails for the purpose of executing a scheme or artifice, to defraud certain persons, firms, and corporations named therein, by means of false pretenses, promises and representations. That at the regular October 1914 term of this court, at which this cause was, for the first time triable, and pursuant to the rule of this court relating to pleas and demurrers to indictments, your petitioner duly filed his motion to quash, and demurrrer to the indictment, as well as his application for a bill of particulars. That upon consideration this court ruled adversely to the defendant upon said motions and demurrer, but held that the questions raised by the demurrer were not frivolous, and that in the circumstances the defendant was entitled to a reasonable time for preparation, and thereupon such proceedings were had that this cause was continued to the regular January 1915 term of this court to be held at Kansas City, Kansas, beginning January 11, 1915. That your petitioner has been  
109 advised that this case is set for hearing upon the merits on January 19, 1915, at Kansas City, Kansas.

II.

Your petitioner shows that on January 21, 1914, certain proceeding in bankruptcy was begun in this court against the Badders Clothing Company. That afterwards in a trial to a jury which was concluded on March 5, 1914, a verdict and judgment against the Badders Clothing Company was returned and entered, adjudging it a bankrupt. That thereafter due proceedings were taken, and said bankruptcy proceeding removed by writ of error and appeal to the United States Circuit Court of Appeals for the Eighth Circuit, where it is now pending. That on October 23, 1914, after the aforesaid proceedings of this court in this case at said October term, counsel for your petitioner received from the United States Circuit Court of Appeals the printed transcript of record in said bankruptcy proceeding, containing 690 printed pages, and soon thereafter were advised that in the assignment of cases for hearing the said appeal and writ of error would be heard by the United States Circuit Court of

Appeals on January 18, 1915, at St. Louis, Missouri—about 300 miles distant from the place set for the trial of this case. That pursuant to the rule of the United States Circuit Court of Appeals it was necessary that the brief, specifications of error, statement and argument in support of said appeal and writ of error in said bankruptcy proceeding should be and they were duly printed, served and filed on December 9, 1914. That there are in said case in said court of appeals a number of meritorious and doubtful questions necessitating an industrious search of said printed record, and of the law, and that the greater part of the time of counsel for your petitioner, 110 from the receipt by them of said printed record up to and including the time of the preparation of said brief was consumed in the preparation thereof. That counsel for said Badders Clothing Company are counsel for your petitioner. That in said bankruptcy proceeding the chief question is whether or not the said Badders Clothing Company was insolvent at the time of the filing of the petition in bankruptcy on January 21, 1914. That in the indictment in the present case it is charged that your petitioner was President of the Badders Clothing Company; that said corporation was insolvent; that your petitioner in the name of said Clothing Company advertised and held a sensational sale, and, in great measure, all of the questions and issues to be tried in this case relate to and are to some extent determinable in said bankruptcy proceeding. That, among other things, it is contended by said Clothing Company that the evidence in said transcript and presented to the jury, and upon which said judgment was based, plainly showed that said Clothing Company was solvent, and if said contention is sustained by said circuit court of appeals then said verdict and adjudication in bankruptcy will be permanently set aside; that until said verdict and judgment is set aside; as and for purposes of estoppel, your petitioner fears that it may be used by the plaintiff herein as tending to establish the truth of the allegation in the indictment herein that said Clothing Company, of which your petitioner is alleged to have been President, was insolvent during the period covered by said indictment, and the charges therein.

### III.

Your petitioner further shows that subsequent to the filing of said petition in bankruptcy against said Clothing Company on January 28, 1914, by the consideration of one of the Judges of this court, George A. Clark of Topeka, Kansas, was appointed 111 receiver of the property of said Clothing Company, and on January 30, 1914, claiming to have qualified as such receiver, took possession of all of the property of said Clothing Company at its store in Topeka, Kansas, and also took possession of books, papers, accounts, bills, invoices, money, and other property and effects of said Clothing Company; that among other things said receiver took charge of correspondence between said Clothing Company and a large number of eastern wholesale houses during the year 1911, and particularly in the fall of that year, and in the early months of 1912; and also invoices and accounts of various

kinds relating to the transactions of said Clothing Company during that period. That in November and December 1911 the said Clothing Company advertised and conducted a large sale under circumstances precisely similar to those which, in the indictment herein, it is charged this defendant conducted in December, 1913; that said sale in 1911 was by said Clothing Company advertised as a sensational sale. That all of the said Clothing Company's creditors, many of whom are referred to in the indictment herein, and who will be called as witnesses by the Government at the trial of this case, sold large quantities of merchandise to said Clothing Company for said sale in 1911. That said invoices, correspondence, accounts and other papers which said George A. Clark took into his possession contained information, consisting of names of creditors, notices to them of such contemplated sale, when goods were received, the amounts and nature of goods sold at said sale, the names of the persons who conducted the same, and other data, by means of which this defendant will be able to establish that said sale in 1911 was proposed and carried on with the full knowledge and consent of the creditors of said Clothing Company in the same manner as

112 the alleged sale mentioned in the indictment herein. That by means of such data, and by means of the testimony which your petitioner can obtain upon examination of creditors whose names occur in such data and who live in St. Louis, Chicago, New York and elsewhere in the East, your petitioner will be able to prove that as a result of said sale said Clothing Company received upwards of Sixty Thousand (\$60,000.00) Dollars, and within sixty days, or thereabouts, after the completion of said sale, in the latter part of December 1912, paid all of the creditors of said Clothing Company for goods purchased for and on account of said sale, and otherwise.

Your petitioner avers also that said sale in 1911 was conducted by sales-managers, who, it is alleged by the Government, conducted the sale referred to in the indictment herein in December 1913. That one of the company, employed by said Clothing Company to conduct the sale in 1911, was one J. Adler. That the plaintiff herein has issued three subpoenas for the said J. Adler, and up to January 7, 1915, no return of service upon said Adler has been made; and your petitioner is not advised whether the plaintiff will be able to have the said J. Adler present at the trial, if the same is held on January 19, 1915.

And your petitioner avers that the said books, papers, invoices, letters, and other data which said George A. Clark took into his possession are indispensable to the preparation of his defense in the respects herein stated, and otherwise.

#### IV.

Your petitioner avers that after the appointment of the said George A. Clark, and on February 10, 1914, said Clothing Company being advised that said appointment was invalid, by proper proceedings for review begun in the United States Circuit Court of Appeals for the eighth Circuit, asked that said appointment be declared wholly illegal and void and said proceeding to re-

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view said order is now pending undetermined in said circuit court of appeals, and with the other Badders Clothing Company litigation is set for hearing on January 18, 1915.

That being advised that said appointment of the said George A. Clark was wholly invalid, and that any recognition of his appointment by applications for orders to compel him to deliver to said Clothing Company any of said books and papers might be construed as some recognition of the validity of said appointment, said Clothing Company has made no application to said bankruptcy court for an order to compel the said George A. Clark to allow your petitioner to examine and use said papers, books, accounts and other data which came into his possession as aforesaid, and your petitioner is not advised that he has any status to apply to said bankruptcy court while said cause is pending in said circuit court of appeals for any such order. That as your petitioner is advised, if said circuit court of appeals shall hold that said appointment of said receiver was and is wholly invalid that then said data will be available to your petitioner. On the other hand, if said appointment is upheld by said circuit court of appeals, then there will be no objection to applying for an order for the examination of such books, papers and other data. That the said George A. Clark lives in Topeka, Kansas, and within 100 miles of the place of trial of this action, and your petitioner has no means by which he can compel the said George A. Clark to exhibit to him, and permit copies to be made, and other examination of such books, papers, accounts, and other data except to request such privilege, which your petitioner 114 has done and has been refused—the said George A. Clark giving your petitioner to understand that in no circumstances whatsoever would your petitioner be allowed to examine such books, papers, or accounts, or any other article or thing in his custody.

Your petitioner further shows that there is in possession of said George A. Clark a large amount of correspondence, books, accounts, and other data by means of which your petitioner will be able to show and establish the facts in regard to the sale alleged in said indictment to have been made in December 1914. That said receiver has refused to allow your petitioner access to any books, papers, accounts, correspondence or letters in his possession. That when your petitioner has access to such data he is advised by counsel that it will be necessary to take depositions of persons living in St. Louis, Chicago, Philadelphia, New York and elsewhere tending to establish that in all respects relating to said sale of December 1913 alleged in said indictment the same was regular and according to the usual course of business, and that without such data your petitioner cannot safely, without an examination of such data and access to such correspondence and other papers determine the names of the parties whose testimony your petitioner desires to have, nor can your petitioner safely proceed to trial and make his defense.

And your petitioner further shows that among the letters and correspondence and other data last referred to there are letters and other papers from and to the firms, persons and corporations referred to in said indictment, by means of which, and of the deposi-

tions of the persons from and to whom said letters were written and said documents sent and received your petitioner will be able to show that no fraud was attempted, and no fraudulent scheme devised or intended by this defendant, and that in every respect  
115 his transactions with said persons, firms, and corporations were legitimate and according to the usual course of business.

## V.

Your petitioner further shows that his counsel retained by him for his defense in this case are also counsel for said Clothing Company. That by its assignment to said circuit court of appeals of said proceedings in error and on appeal said counsel must attend said court on January 18, 1915, at St. Louis, Missouri, and there await the time when they can be heard. That said counsel have been employed in preparing for the argument and hearing in the Circuit Court of Appeals. That no answer brief in behalf of the defendants in error and appellees in said matter in said circuit court of appeals has yet been served upon such counsel and it is indispensable to the proper preparation for the hearing in that case that after answer briefs are filed that counsel should have time to examine the same and be ready for the argument set for January 18, 1915; and as your petitioner is advised by reason of the foregoing demands upon them, said counsel, as counsel for petitioner, have not been able to, for want of time, to fully prepare your petitioner's defense, and upon their return from attendance upon said circuit court of appeals must have some time within which to make such preparation, if, notwithstanding the facts averred herein, your petitioner shall be required to enter upon a trial of this action upon its merits pending a determination of the appeals and writ of error in said bankruptcy proceeding. That your petitioner is advised by counsel that four or five days after said cases are heard in said circuit court of appeals, will be necessary to properly prepare for your petitioner's defense. That the plaintiff herein has subpoenaed  
89 witnesses, who the plaintiff proposes to examine in support of the allegations in said indictment. That your petitioner is advised by counsel for the plaintiff that 134 letters to 53 alleged  
116 creditors of said Clothing Company may be offered in evidence. That 24 lengthy mercantile reports and notice of many others to be used, are stated by the plaintiff as items of evidence; that a large number of telephone calls are to be referred to and offered in evidence, together with a large number of telegrams. That your petitioner is advised that the plaintiff expects to use all, or any part of the exhibits offered in evidence in said bankruptcy proceeding. That said exhibits comprise 185 printed pages in the transcript now in the circuit court of appeals, and the question as to the admissibility of said exhibits is one of the vital questions involved in said writ of error and said appeals.

That your petitioner is advised that the plaintiff has made elaborate preparations for the trial of this action and that witnesses have been subpoenaed to attend on January 19, 1915.

Your petitioner therefore offers to notify all of said witnesses, if permitted to do so at his own expense, of any postponement that to the court may seem just and proper, to the end that there may be no expense involved in a postponement of the time of the trial of this action.

Wherefore your petitioner most respectfully prays that the time of the trial of this action be postponed until the circuit court of appeals shall have considered and determined said writ of error and appeals in said bankruptcy proceeding, to the end that if said writ of error is sustained, that said adjudication of insolvency and bankruptcy may be vacated and no longer constitute matter of estoppel.

In any event, that the time for the hearing of said cause be postponed until some provision can be made for furnishing  
 117 to your petitioner, without prejudice, such books, papers, accounts, invoices, correspondence, and other data now in the hands of the said George A. Clark, and time for the examination of the same, and time for the examination of witnesses, the materiality of whose testimony bears upon the issue of the intent of your petitioner in respect to the alleged sale by said Clothing Company in December 1914 by reference to a previous sale conducted in the same manner, and transactions which were not interrupted and rendered impossible by reason of the intervention of what your petitioner is advised was a wholly illegal proceeding in bankruptcy; and

In the alternative your petitioner most respectfully asks that in view of the engagements of his counsel in a superior court of the United States on the day before, and very probably including the day set for the trial of this action, that they be given further time after their return from attendance upon said United States Circuit Court of Appeals in which to prepare your petitioner's defense as may to the court seem just.

JAS. H. HARKLESS,

D. R. HITE.

*Attorneys for Petitioner.*

STATE OF MISSOURI,

*County of Jackson, ss:*

Jas. H. Harkless and D. R. Hite, of lawful age, being first duly sworn, on their oaths depose and say that they are counsel for the Badders Clothing Company and also counsel for the above named petitioner. That they are informed as to the facts alleged in said petition, and particularly the facts relating to the proceeding in bankruptcy, the appeal and writ of error therefrom, and  
 118 the pendency of the proceedings in the United States Circuit Court of Appeals. That, as such counsel, they have diligently attended to the demands of an elaborate transcript and important questions of law and of fact, and are now awaiting the answer brief from the other side in order to prepare for the hearing of said matters in said circuit court of appeals on January 18, 1915. That laying aside other engagements counsel will need all of the



time, before said hearing, to prepare for the same upon the receipt of said answer brief, and that in justice to the petitioner, counsel cannot be ready for trial on the merits of this action on January 18th, and that after their return from said hearing in St. Louis the importance of the petitioner's case, the large number of witnesses called by the plaintiff, the great number of important documents which the Government expects to use, and the lack of the evidence referred to in said petition will render it impossible for counsel to be ready for the trial of this case upon its merits in less time than one week after such return.

The affiants have advised the petitioner that when access has been obtained to the books, papers, correspondence, and other data stated by said petitioner to be in the hands of said George A. Clark, that it will, undoubtedly, become necessary to supplement the contents of such documents with the testimony of those to whom letters were written, and from whom letters were received and with whom said Clothing Company had transactions. That without such data it is impossible to ascertain the names and addresses of such witnesses, and therefore impossible to take the testimony which affiants have advised petitioner are necessary to his proper defense.

JAS. H. HARKLESS.  
D. R. HITE.

119       Subscribed and sworn to before me this 9th day of January, 1915.

My commission expires Oct. 24, 1917.

[SEAL.]

EMMA KEINZLE,  
*Notary Public, Jackson County, Missouri.*

STATE OF MISSOURI,

*County of Jackson, ss:*

D. R. Hite of lawful age being first duly sworn on his oath deposes and says that he has read the foregoing petition, and except as to the nature of the data in the hands of said George A. Clark and relating to matters prior to the sale of December 1913, affiant personally knows and has been connected with the transactions set out in said petition. That affiant personally confirmed the refusal by the said George A. Clark of access by the petitioner to said books, papers, accounts and other data in his hands by calling over the telephone Mr. R. L. Thomas, employed as an assistant by Mr. Clark, who stated to affiant that under Mr. Clark's instructions Mr. Badders could not have access to anything, whatever, in Mr. Clark's possession.

On information and belief affiant avers that the statements in said petition relative to the contents of said invoices, books, correspondence, and other data are true and as to all other facts in said petition affiant avers that the same are true.

Further affiant does not say.

D. R. HITE.

Subscribed and sworn to before me this 9th day of January 1915.  
My commission expires Oct. 24, 1917.

[SEAL.]

EMMA KEINZLE,  
*Notary Public, Jackson County, Missouri.*

120      Endorsed: No. 4160. United States of America vs. George  
S. Badders, Application for Extending and Postponing of  
Trial. Filed January 9, 1915. Morton Albaugh, Clerk.

121      In the District Court of the United States, District of Kansas,  
First Division.

No. 4160.

UNITED STATES OF AMERICA, Plaintiff,

vs.

GEORGE S. BADDERS, Defendant.

UNITED STATES OF AMERICA.

*Eastern District of Missouri, ss:*

I, John D. Jordan, being first duly sworn, on oath say: That I am now and at all times for more than one year just last past constantly have been clerk of the United States Circuit Court of Appeals for the Eighth Circuit.

That, as is the usual custom in my office, as said clerk, upon September 1st, 1914, or shortly thereafter, I mailed or caused to be mailed, to the respective counsel for all parties, a proposed assignment of cases for hearing at the December, 1914, term of said court, at St. Louis, Missouri, a duplicate copy of which proposed assignment is hereto attached, marked Exhibit A, and is made a part hereof,

That subsequently, and on October 3rd, 1914, or within a day or two thereafter, I mailed or caused to be mailed out to all counsel a final assignment of cases for hearing at the said December, 1914, term of said Circuit Court of Appeals at St. Louis, Missouri, a duplicate copy of which final assignment is hereto attached, marked Exhibit B, and is made a part hereof; that among the counsel and attorneys to whom said assignments hereto attached as Exhibits A and B, were sent, as aforesaid, were J. H. Harkless, of Kansas City,

122      Missouri, D. R. Hite, of Topeka, Kansas, attorneys of record in said Circuit Court of Appeals for The Badders Clothing Company; that said assignments, Exhibits A, and B, were each enclosed in duly addressed envelopes, properly franked, and were, shortly after the dates which they respectively bear, after being so enclosed and addressed, deposited in the United States Post-office at St. Louis, Missouri, to be transmitted to said addresses.

JOHN D. JORDAN.

Subscribed and sworn to before me this 13th day of January, A. D. 1915.

[SEAL.]

IRVINE MITCHELL,  
*United States Commissioner at St. Louis, Mo.*



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## EXHIBIT "A."

United States Circuit Court of Appeals, Eighth Circuit.

*Proposed Assignment of Cases for Hearing at the December Term,  
1914, at St. Louis, Missouri.*

## Notice to Counsel.

ST. LOUIS, MO., September 1, 1914.

The following is a proposed assignment of cases to be heard at the December Term, 1914, of said court, to be held at St. Louis, Missouri.

Stipulations of counsel to set their cases on other days will be considered by the court in making the final assignment of cases, if received on or before October 1, 1914. If no such stipulation is received in a case, it must be argued, or submitted on briefs, when reached on the regular call, or be continued to the next session of the court.

As the filing of stipulations above contemplated will probably disarrange the temporary setting of cases, counsel who desire that their cases be heard on the days assigned in the present list, may so stipulate, but such stipulation must be filed on or before October 1, 1914.

The final list of cases will be printed and mailed to counsel on or about the first day of October, 1914, and no cases filed and docketed after the last named date will be assigned to be heard at the December Term, unless advanced by special order of the court.

JOHN D. JORDAN, *Clerk*.

NOTE.—The rules require records upon appeals and writs of error to be printed 60 days; briefs of plaintiffs in error and appellants to be filed 40 days, and briefs of defendants in error and appellees to be filed 10 days before the day for which the case is assigned to be heard.

The printing of records and filing of briefs upon original petitions to revise are governed by Rules 40 and 41.

Monday, December 7, 1914.

- 3900. Alvin H. Stout v. United States of America.
- 3928. A. L. Wolff, et al. v. State National Bank of Shawnee.
- 3934. I. E. Trent, et al. v. United States of America.
- 3994. Mitchell C. Perara v. United States of America.
- 4043. George B. Vaughan, et al. v. McArthur Brothers Company.
- 4064. J. F. Ripley, et al. v. The Jackson Zinc and Lead Company.
- 4072. The Linden Investment Company v. Honstain Brothers Company.
- 4075. O. Kemmerer v. Midland Oil and Drilling Company.

Tuesday, December 8, 1914.

- 4087. Raymond H. Hoss, et al. v. United States of America.
- 4088. Raymond H. Hoss v. United States of America.
- 4091. John W. Talbot, et al. v. Independent Order of Owls, et al.
- 4104. Kansas Gas and Electric Company v. The City of Cherryvale, et al.
- 4107. R. M. Lee v. Kansas City Southern Railway Company.
- 137. Orig. T. E. Armstrong v. Hugh T. Fisher, Trustee in Bankruptcy, etc.
- 4108. Smith and Company, Ltd. v. Kingfalfa Mills.
- 4109. Elvie L. Parsons v. William Trowbridge, Executor, etc.
- 4110. Charles W. Johnson v. United States of America.

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Wednesday, December 9, 1914.

- 4119. L. W. Clapp v. United States of America.
- 4120. The Pope-Hartford Motor Car Company v. The Waverly Company.
- 4128. Old Colony Trust Company v. Wickard Bros., et al. Interveners, etc.
- 4180. Fort Dodge, Des Moines and Southern Railroad Co. v. Wickard Bros. and about 150 others, Interveners.
- 4145. Joseph Filler v. Joseph Schlitz Brewing Company.
- 4149. L. Lewellen v. United States of America.
- 4155. H. D. Williams Cooperage Company v. United States of America.
- 4157. Harry D. Todd v. United States of America.

Monday, December 14, 1914.

- 4168. City of Texarkana, Arkansas v. Texarkana Water Corporation.
- 4169. United States of America v. Christopher James Davis Deans.
- 4170. United Well Works, et al. v. Mahlon E. Layne, et al.
- 4175. S. L. Whitfield, Immigrant Inspector, etc., et al. v. George Hanges, et al.
- 4178. Benjamin F. Moffatt v. United States of America.
- 4184. Newton B. Childs v. Missouri, Kansas and Texas Railroad Co.
- 4187. Frank C. Heim v. The Robt. G. Speer Corporation, et al.
- 4192. Browns Valley State Bank, et al. v. Clement F. Porter.

Tuesday, December 15, 1914.

- 4193. A. W. Allen, et al. v. Walter H. Rhodes, Successory Receiver, etc.
- 4194. Woody Stewart v. United States of America.
- 4197. Frederic A. Delano, et al. v. Albert Pierce.
- 4198. W. S. Farish v. State Banking Board of the State of Oklahoma, et al.

4199. State Banking Board of the State of Oklahoma, et al. v. W. S. Farish.  
 142, Orig. Charles W. Smallwood, Trustee in Bankruptcy, etc. v. George Moore, et al.  
 4200. Hiram Chase v. United States of America, as Trustee and Guardian, etc.  
 4201. Howard Weber v. Freeman E. Hertz, et al.

Wednesday, December 16, 1914.

4203. John P. Galbraith, as Trustee, etc. v. First National Bank of Alexandria, Minn.  
 4204. G. M. Rushing, et al., Administrators, etc. v. Manhattan Life Insurance Company of New York.  
 4205. United States of America v. Independent Packet Company.  
 4206. Henry C. Flower, Trustee v. Commercial Trust Company.  
 4207. Henry C. Flower, Trustee v. Central National Bank.  
 4208. Clarence L. Hogin, Trustee v. Central National Bank.  
 4209. C. O. Robinson, et al. v. The Long Gas Company, et al.  
 4210. Frederick von Baumbach, Collector of Internal Revenue v. Crescent Creamery Company.  
 4211. Frederick von Baumbach, Collector of Internal Revenue v. Crescent Creamery Company.  
 145, Orig. Joseph Pollack v. Meyer Brothers Drug Company, et al.

Monday, December 21, 1914.

4213. The National Bank of Commerce in St. Louis v. Equitable Trust Co.  
 4215. New York Scaffolding Company v. Egbert Whitney.  
 4217. United States of America v. William J. Cook, et al.  
 125 4221. Fannie M. Moore v. United States of America.  
 4222. D. C. Wise Coal Company, et al. v. Fred O. Small, Trustee, etc.  
 4224. Jay Brotherton, et al. v. The Bank of Ottawa Company, et al.  
 146, Orig. William J. Parmeter v. Roy Butler, as Trustee, etc., et al.  
 4225. Missouri and Kansas Interurban Railway Co. v. J. A. Edson, Receiver.

Tuesday, December 22, 1914.

4226. Colorado Yule Marble Company v. George J. S. Collins.  
 4227. Kiefer Oil & Gas Company v. D. A. McDougal.  
 4228. William J. Amicker v. David Gunsburg, et al.  
 4229. Edmund W. Mudge v. Black-Sheridan and Wilson, et al.  
 4230. H. L. Brennehan, et al. v. Black-Sheridan and Wilson, et al.  
 4231. Chesapeake and Ohio Coal and Coke Company v. Black-Sheridan and Wilson, et al.  
 4232. The T. L. Smith Company v. Isaac H. Orr, Receiver.

- 4233. Cohen-Schwartz Rail & Steel Co. v. Black-Sheridan and Wilson, et al.
- 4234. W. H. Smollinger, doing business as the Iron Mountain Stock Farm v. Black-Sheridan and Wilson, et al.
- 4235. Jermain P. Quinette v. The Pullman Company, et al.
- 4236. Gust Jours v. Harry C. Allen, Immigration Inspector.
- 4237. Percy A. Hipple, et al. v. Bates County in the State of Missouri.

Monday, January 4, 1915.

- 4239. William Fetzner v. Dempster Mill Manufacturing Company.
- 4240. Alex Sellers v. United States of America.
- 4244. The Manhattan City and Interurban Railway Company, et al. v. General Electric Company.
- 4245. Walter Fawcett v. United States of America.
- 4246. Joe Johnson v. United States of America.
- 4247. William Chalk v. United States of America.
- 4248. Central Trust Company of New York v. City of Duluth, et al.
- 4251. Cribben & Sexton Company, et al. v. North End House Furnishing Company.

Tuesday, January 5, 1915.

- 147. Orig. James Harrison, et al. v. Hon. Smith McPherson, Judge, etc.
- 4253. James A. Harris, Trustee, etc. v. H. E. Dodge, et al.
- 4254. United States of America, ex rel. United Iron Works Co., et al. v. William W. Luyster, et al.
- 4255. United States of America v. Helen F. Woods.
- 4274. Helen F. Woods v. United States of America.
- 4256. United States of America v. J. B. Stigall.
- 4257. John Crites v. United States of America.
- 4258. H. E. Dodge, et al. v. James A. Harris, Trustee, etc.
- 4259. St. Joseph Lead Company v. Walerty Semanski.

Wednesday, January 6, 1915.

- 4260. The National Bank of Commerce in St. Louis v. E. B. Allen, United States Collector of Internal Revenue, etc.
- 4262. United States of America v. Owen F. Turner.
- 4270. United States on the relation of Fall City Construction Co. v. W. F. Jimmerson, as Assessor of Monroe County, Arkansas, et al.
- 6 4271. Thomas L. Chadbourne, Jr., et al. v. The Equitable Trust Company of New York, et al.
- 4272. Eli P. Williams, et al. v. United States of America.
- 4273. Pennsylvania Mining Company v. Frank Jarnigan.
- 4275. W. H. Watlington v. United States of America.

Monday, January 11, 1915.

- 4276. Northwestern Port Huron Company v. Howard Babcock, et al.
- 4277. Albert M. Wheeler v. The Hartford Life Insurance Company.
- 4278. Lee Wilson & Company v. The United States.
- 4279. Thomas Isbell v. United States of America.
- 4281. Fidelity Trust Company v. The Hutchinson Chemical & Alkali Company, et al.
- 4282. Thomas W. Morgan, Warden, etc. v. Dan A. Ward, et al.
- 4283. Morgan Jones, et al. v. Missouri-Edison Electric Co., et al.
- 4284. George W. Bellamy, et al., as Railroad Commissioners of Arkansas, et al. v. St. Louis, Iron Mountain & Southern Ry. Co.

Tuesday, January 12, 1915.

- 4285. Philip A. Cooley, et al. v. Thomas W. Morgan.
- 4287. United States of America v. Western Investment Co., et al.
- 4288. J. W. Duvall, et al. v. The Synod of Kansas of the Presbyterian Church, etc., et al.
- 4289. J. F. Shepherd, et al. v. James M. Barkley, Moderator, etc., et al.
- 4290. Miles Collins, Administrator, etc. v. Peoples Power Company.
- 148. Orig. Greeley A. Jones v. J. C. Robb and Company.
- 4291. James Harrison, et al. v. William S. Richards.
- 4292. The Badders Clothing Company v. Burnham-Munger-Root Dry Goods Co., et al. (Error.)
- 4293. The Badders Clothing Company v. Burnham-Munger-Root Dry Goods Co., et al. (Appeal.)
- 139. Orig. The Badders Clothing Co., et al. v. The Burnham-Munger-Root Dry Goods Co., et al.
- 4294. Don A. MounDay, et al. v. United States of America.

Wednesday, January 13, 1915.

- 4296. V. O. Johnston, et al. v. Jesse A. Shearer, et al.
- 4297. Guaranty Trust Co. of New York, et al. v. Bettendorf Axle Company.
- 4300. G. H. York v. United States.
- 4301. Christopher J. Lawless v. Mark W. Woods, substituted for Werter S. Farrar.
- 4302. William Short v. United States of America.
- 4303. William E. Thomas, Executor, etc. et al. v. Harry Anderson, et al.
- 4305. Union Pacific Railroad Co., et al. v. Charles A. Frank, et al.
- 4306. Charles A. Frank, et al. v. Union Pacific Railroad Co., et al.

Monday, January 18, 1915.

- 4307. Northern Central Coal Company v. John Calvin Hughes.
- 4308. Ida R. Roberts, et al. v. Myra J. Roberts.
- 149. Orig. Daniel E. Strub v. Hugh S. Gamble, as Trustee, etc.
- 4310. The Western Union Telegraph Co., Intervener, v. United States and Mexican Trust Co., et al.

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### EXHIBIT "B."

United States Circuit Court of Appeals, Eighth Circuit.

*Final Assignment of Cases for Hearing at the December Term, 1914,  
at St. Louis, Missouri.*

This list supersedes the list of September 1, 1914.

Notice to Counsel.

ST. LOUIS, MO., October 3, 1914.

The rules require records to be printed 60 days; briefs of plaintiffs in error and appellants to be filed 40 days, and briefs of defendants in error and appellees to be filed 10 days before the day for which the case is assigned to be heard.

The printing of records and filing of briefs upon original petitions to revise are governed by Rules 40 and 41.

Cases must be argued, or submitted on briefs, when reached on the regular call, or be continued to a succeeding term, in accordance with the provisions of Rule Three.

Monday, December 7, 1914.

- 4310. The Western Union Telegraph Company, Intervener v. United States and Mexican Trust Company et al.
- 4070. The Work Mining and Milling Company v. The Doctor Jack Pot Mining Company.
- 3781. Fireball Gas Tank and Illuminating Company, et al. v. Commercial Acetylene Company, et al.
- 3928. A. L. Wolff, et al. v. State National Bank of Shawnee.
- 3934. I. E. Trent, et al. v. United States of America.
- 3994. Mitchell C. Perara v. United States of America.
- 4043. George B. Vaughan, et al. v. McArthur Brothers Company.
- 4064. J. F. Ripley, et al. v. The Jackson Zinc and Lead Company.
- 4072. The Linden Investment Company v. Honsain Brothers Company.
- 4075. O. Kemmerer v. Midland Oil and Drilling Company.

Tuesday, December 8, 1914.

- 4087. Raymond H. Hoss, et al. v. United States of America.
- 4088. Raymond H. Hoss v. United States of America.

- 4091. John W. Talbot, et al. v. Independent Order of Owls, et al.
- 4095. United States of America v. Lewis Koleno, et al.
- 4104. Kansas Gas and Electric Company v. The City of Cherryvale, et al.
- 4107. R. M. Lee v. Kansas City Southern Railway Company.
- 4108. Smith and Company, Ltd. v. Kingfalfa Mills.
- 4109. Elvie L. Parsons v. William Trowbridge, Executor, etc.
- 4110. Charles W. Johnson v. United States of America.

Wednesday, December 9, 1914.

- 4119. L. W. Clapp v. United States of America.
- 4120. The Pope-Hartford Motor Car Company v. The Waverly Company.
- 4127. George L. Colburn, et al. v. United States of America.
- 4145. Joseph Filler v. Joseph Schiltz Brewing Company.
- 4155. H. D. Williams Cooperage Company v. United States of America.
- 4157. Harry D. Tood v. United States of America.
- 4168. City of Texarkana, Arkansas v. Texarkana Water Corporation.

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Monday, December 14, 1914.

- 4169. United States of America v. Christopher James Davis Deans.
- 4170. United Well Works, et al. v. Mahlon E. Layne, et al.
- 4175. S. L. Whitfield, Immigrant Inspector, etc., et al. v. George Hanges, et al.
- 4178. Benjamin F. Moffatt v. United States of America.
- 4184. Newton B. Childs v. Missouri, Kansas and Texas Railroad Co.
- 4187. Frank C. Heim v. The Robt. G. Speer Corporation, et al.
- 4192. Browns Valley State Bank, et al. v. Clement F. Porter.
- 4324. Clarence Griggs, et al., as Executors, etc. v. E. E. Nadeau.

Tuesday, December 15, 1914.

- 4149. L. Lewellen v. United States of America.
- 4311. Henry Baker v. United States of America.
- 4193. A. W. Allen, et al. v. Walter H. Rhodes, Successory Receiver, etc.
- 4198. W. S. Farish v. State Banking Board of the State of Oklahoma, et al.
- 4199. State Banking Board of the State of Oklahoma, et al. v. W. S. Farish.
- 142. Orig. Charles W. Smallwood, Trustee in Bankruptcy, etc. v. George Moore, et al.
- 4200. Hiram Chase v. United States of America, as Trustee and Guardian, etc.
- 4201. Howard Weber v. Freeman E. Hartzel, et al.

Wednesday, December 16, 1914.

- 4203. John P. Galbraith, as Trustee, etc. v. First National Bank of Alexandria, Minn.
- 4204. G. M. Rushing, et al., Administrators, etc. v. Manhattan Life Insurance Company of New York.
- 4205. United States of America v. Independent Packet Company.
- 4209. C. O. Robinson, et al. v. The Long Gas Company, et al.
- 4210. Frederick von Baumbach, Collector of Internal Revenue v. Crescent Creamery Company.
- 4211. Frederick von Baumbach, Collector of Internal Revenue v. Crescent Creamery Company.
- 145. Orig. Joseph Pollack v. Meyer Brothers Drug Company, et al.
- 4213. The National Bank of Commerce in St. Louis v. Equitable Trust Co.
- 4215. New York Scaffolding Company v. Egbert Whitney.

Monday, December 21, 1914.

- 4219. Harry B. Gardner v. United States of America.
- 4220. Harry M. Coudrey v. United States of America.
- 4222. D. C. Wise Coal Company, et al. v. Fred O. Small, Trustee, etc.
- 4194. Woody Stewart v. United States of America.
- 4217. United States of America v. William J. Cook, et al.
- 4221. Fannie M. Moore v. United States of America.
- 4256. United States of America v. J. B. Stigall.
- 4224. Jay Brotherton, et al. v. The Bank of Ottawa Company, et al.
- 146. Orig. William J. Parmeter v. Roy Butler, as Trustee, etc., et al.

Tuesday, December 22, 1914.

- 4225. Missouri and Kansas Interurban Railway Co. v. J. A. Edson, Receiver.
- 4226. Colorado Yule Marble Company v. George J. S. Collins.
- 4227. Kiefer Oil & Gas Company v. D. A. McDougal.
- 4315. G. W. Collier v. United States of America.
- 4229. Edmund W. Mudge v. Black-Sheridan and Wilson, et al.
- 4230. H. L. Brenneman, et al. v. Black-Sheridan and Wilson, et al.
- 4231. Chesapeake and Ohio Coal and Coke Company v. Black-Sheridan and Wilson, et al.
- 4232. The T. L. Smith Company v. Isaac H. Orr, Receiver.
- 4233. Cohen-Schwartz Rail & Steel Co. v. Black-Sheridan and Wilson, et al.
- 4234. W. H. Smollinger, doing business as the Iron Mountain Stock Farm v. Black-Sheridan and Wilson, et al.
- 4235. Jermain P. Quinette v. The Pullman Company, et al.
- 4236. Gust Jours v. Harry C. Allen, Immigration Inspector.



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Monday, January 4, 1915.

4197. Frederic A. Delano, et al. v. Albert Pierce.  
4237. Percy A. Hipple, et al. v. Bates County in the State of Missouri.  
4239. William Fetzter v. Dempster Mill Manufacturing Company.  
4240. Alex Sellers v. United States of America.  
4245. Walter Fawcett v. United States of America.  
4246. Joe Johnson v. United States of America.  
4247. William Chalk v. United States of America.  
4251. Cribben & Sexton Company, et al. v. North End House Furnishing Company.

Tuesday, January 5, 1915.

4228. William J. Anicker v. David Gunsberg, et al.  
4242. United States of America v. Union Pacific Railroad Company.  
4243. United States of America v. Union Pacific Railroad Company.  
4244. The Manhattan City and Interurban Railway Company, et al. v. General Electric Company.  
4248. Central Trust Company of New York v. City of Duluth, et al.  
4257. John Crites v. United States of America.  
4279. Thomas Isbell v. United States of America.  
147. Orig. James Harrison, et al. v. Hon. Smith McPherson, Judge, etc.

Wednesday, January 6, 1915.

3900. Alvin H. Stout v. United States of America.  
4253. James A. Harris, Trustee, etc. v. H. E. Dodge, et al.  
4254. United States of America, ex rel. United Iron Works Co., et al. v. William W. Luyster, et al.  
4258. H. E. Dodge, et al. v. James A. Harris, Trustee, etc.  
4259. St. Joseph Lead Company v. Walerty Semanski.  
4260. The National Bank of Commerce in St. Louis v. E. B. Allen, United States Collector of Internal Revenue, etc.  
4262. United States of America v. Owen F. Turner.  
4270. United States on the relation of Fall City Construction Co. v. W. F. Jimmerson, as Assessor of Monroe County, Arkansas, et al.

Monday, January 11, 1915.

4206. Henry C. Flower, Trustee v. Commercial Trust Company.  
4207. Henry C. Flower, Trustee v. Central National Bank.  
4208. Clarence L. Hugin, Trustee v. Central National Bank.  
4271. Thomas L. Chadbourne, Jr., et al. v. The Equitable Trust Company of New York, et al.

- 4272. Eli P. Williams, et al. v. United States of America.
- 4255. United States of America v. Helen F. Woods.
- 4274. Helen F. Woods v. United States of America.
- 4273. Pennsylvania Mining Company v. Frank Jarnigan.
- 4276. Northwestern Port Huron Company v. Howard Babcock,  
et al.
- 4314. Clement F. Porter, Jr., Receiver, etc. v. F. M. Davies &  
Co. (Error.)
- 4327. Clement F. Porter, Jr., Receiver, etc. v. F. M. Davies &  
Co. (Appeal.)

Tuesday, January 12, 1915.

- 4275. W. H. Watlington v. United States of America.
- 4277. Albert M. Wheeler v. The Hartford Life Insurance Com-  
pany.
- 4278. Lee Wilson & Company v. United States.
- 4281. Fidelity Trust Company v. The Hutchinson Chemical &  
Alkali Company, et al.
- 4282. Thomas W. Morgan, Warden, etc. v. Dan A. Ward, et al.
- 4283. Morgan Jones, et al. v. Missouri-Edison Electric Co., et al.
- 4284. George W. Bellamy, et al., as Railroad Commissioners of  
Arkansas, et al. v. St. Louis, Iron Mountain & Southern  
Ry. Co.
- 4287. United States of America v. Western Investment Co., et al.

130 Wednesday, January 13, 1915.

- 4285. Philip A. Cooley, et al. v. Thomas W. Morgan.
- 4288. J. W. Duvall, et al. v. The Synod of Kansas of the Presby-  
terian Church, etc., et al.
- 4289. J. F. Shepherd, et al. v. James M. Barkley, Moderator, etc.,  
et al.
- 4290. Miles Collins, Administrator, etc. v. Peoples Power Com-  
pany.
- 148. Orig. Greeley A. Jones v. J. C. Robb and Company.
- 4291. James Harrison, et al. v. William S. Richards.
- 4297. Guaranty Trust Co. of New York, et al. v. Bettendorf Axle  
Company.
- 4303. William E. Thomas, Executor, etc. et al. v. Harry Anderson,  
et al.

Monday, January 18, 1915.

- 3777. Malcolm Trapp v. Territory of New Mexico.
- 3778. Jim Walker v. Territory of New Mexico.
- 4128. Old Colony Trust Company v. Wickard Bros., et al. Inter-  
veners, etc.
- 4180. Fort Dodge, Des Moines and Southern Railroad Co. v.  
Wickard Bros. and about 150 others, Interveners.
- 137. Orig. T. E. Armstrong v. Hugh T. Fisher, Trustee in Bank-  
ruptcy, etc.

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- 4292. The Badders Clothing Company v. Burnham-Munger-Root Dry Goods Co., et al. (Error.)
- 4293. The Badders Clothing Company v. Burnham-Munger-Root Dry Goods Co., et al. (Appeal.)
- 139, Orig. The Badders Clothing Co., et al. v. The Burnham-Munger-Root Dry Goods Co., et al.
- 4294. Don A. MounDay, et al. v. United States of America.

Tuesday, January 19, 1915.

- 4296. V. O. Johnston, et al. v. Jesse A. Shearer, et al.
- 4300. G. H. York v. United States.
- 4301. Christopher J. Lawless v. Mark W. Woods, substituted for Werter S. Farrar.
- 4302. William Short v. United States of America.
- 4305. Union Pacific Railroad Co., et al. v. Charles A. Frank, et al.
- 4306. Charles A. Frank, et al. v. Union Pacific Railroad Co., et al.
- 4307. Northern Central Coal Company v. John Calvin Hughes.
- 4308. Ida R. Roberts, et al. v. Myra J. Roberts.

Wednesday, January 20, 1915.

- 4309. E. N. Gillespie v. Steven Collier, a minor, etc.
- 149, Orig. Daniel E. Strub v. Hugh S. Gamble, as Trustee, etc.
- 4312. Nelson Charles Chapman, et al. v. Chemical Building Company, et al.
- 4316. Frank E. Wear v. Imperial Window Glass Company.
- 4317. Clyde F. Sugg, et al. v. John Eskew, et al.
- 4323. Abraham R. Byrd v. George Allen Hall, et al.
- 4318. Arch Wright v. United States of America.
- 4319. W. F. Parks v. United States of America.

Monday, January 25, 1915.

- 4320. Illinois Central Railroad Company v. Lillie M. Stewart, Administratrix, etc.
- 4322. A. H. Sharum v. Whitehead Coal Mining Company.
- 4325. Bartlett & Kling, a corporation, et al. v. American Radiator Company, et al.
- 4328. Westinghouse Church Kerr & Company, Intervener v. United States & Mexican Trust Company.
- 4331. Crescent Milling Company v. The H. N. Strait Manufacturing Company.
- 4332. International Lumber Company v. United States of America.
- 4333. Cloquet Lumber Company v. Granville A. Burns.
- 4326. The Atchison, Topeka and Santa Fe Ry. Co. v. The Board of County Commissioners of the County of Douglas, State of Colorado, et al.

Tuesday, January 26, 1915.

4334. Ezekiel M. Roberts, et al. v. Cherry Cheer Company, a corporation.  
 4335. Phin Kimball, doing business, etc. v. The Berlin Machine Works, a corporation.  
 4336. Henry G. Dinot v. The City of Rapid City.  
 4337. David C. Gilliland v. Cecil F. Adamson.

131 Endorsed: No. 4160. In the District Court of the United States, District of Kansas, First Division. United States, Plaintiff, vs. George S. Badders, Defendant. Affidavit. Filed January 15, 1915. Morton Albaugh, Clerk.

132 *Journal Entry.*

WEDNESDAY, January 20, 1915.

No. 4160.

THE UNITED STATES

vs.

GEORGE S. BADDERS.

Now come the parties hereto, the Government appearing by Fred Robertson, United States Attorney and Francis M. Brady, Assistant United States Attorney; defendant, George S. Badders appearing in person and by J. H. Harkless and D. R. Hite, his attorneys. Thereupon comes on for hearing defendant's motion for a continuance and the court having heard the evidence introduced both for and against said motion, the arguments of counsel, and being well advised in the premises finds said motion for a continuance should be, and the same hereby is overruled, to which order and ruling of the court defendant excepts. Thereupon the court proceeds to impanel a jury to try the issues in this case, and the hour of adjournment having arrived, the jurors who have qualified are admonished of their duties by the court and further proceedings in the case are postponed until tomorrow.

3 In the District Court of the United States for the District of Kansas, First Division.

No. 4160.

UNITED STATES OF AMERICA, Plaintiff,

vs.

GEORGE S. BADDERS, Defendant.

*Order.*

Now on this 20th day of January, A. D. 1915, the above endorsed case coming on for hearing upon the application of the plain-

tiff to endorse the names of witnesses upon the indictment, the Court being fully advised in the premises, it is hereby Ordered that the names of Samuel Baum, Topeka, Kansas, and I. W. Levy, 707 Broadway, New York City, N. Y., Nat K. Baum, St. Louis, Missouri, James Donald, St. Louis, Missouri, Joseph Meier, Kansas City, Missouri, Alfred L. Beck, New York City, New York, Samuel Baum, Job Little, J. R. Mulvane, Geo. H. Hoyes, O. N. Chesney, Geo. S. Ferguson, of Topeka, Kansas, and Morton Albaugh, Clerk of Court, Topeka, Kansas, be endorsed upon the indictment in this case as witnesses:

Endorsed: No. 4160. United States of America, Plaintiff, vs. George S. Badders, Defendant. Order to endorse witnesses. Filed January 20, 1915. Morton Albaugh, Clerk.

134

*Journal Entry of Jan. 21, 1915.*

#4160.

UNITED STATES.  
vs.  
GEO. S. BADDERS.

Now come the parties hereto same as on yesterday, the Government appearing by Fred Robertson, U. S. Attorney, and Francis M. Brady, Assistant U. S. Attorney; said defendant George S. Badders being present in his own proper person and by D. R. Hite, and James H. Harkless, his attorneys. Thereupon said defendant is arraigned upon the indictment herein, said indictment being then and there read to him but said defendant declines to plead thereto. Thereupon it is by the court ordered that a plea of not guilty be and the same is hereby entered for and on behalf of said defendant. Thereupon the impaneling of a jury herein is proceeded with and to try the issues submitted to them comes the following jury to-wit: Weldon Worrell, John Kelley, James Carney, H. C. Short, John Callahan, W. L. Davis, J. C. Page, Frank Warner, S. P. Crampton, W. M. Green, W. K. Hanna, and Charles Matthews, twelve good and lawful men of the body of the First Division of the District of Kansas, who being duly impaneled and sworn to well and truly try the issues submitted to them and a true verdict give according to the law and the evidence, the trial of said case is proceeded with.

Thereupon Fred Robertson, United States Attorney, makes a statement of the case on behalf of the Government and of the evidence he expects to offer in support thereof, which is immediately followed by a statement by D. R. Hite on behalf of the defendant.

Thereupon on motion therefor, it is ordered by the court that the jury be in charge of the Marshal during the trial of this case and that he furnish meals and lodging for said jurors and for such bailiffs as may be necessary, during such trial and the hour of adjournment having arrived and the trial of said case not being

concluded, the jury is admonished of its duties by the court, retires  
in charge of United States Marshal and the further hearing  
of said case is postponed until Saturday morning, January  
23, 1915, at ten o'clock A. M.

*Journal Entry of January 23, 1915.*

#4160.

UNITED STATES  
vs.  
GEO. S. BADDERS.

Now come the parties hereto same as before, the Government appearing by Fred Robertson, U. S. Attorney, and Francis M. Brady, Ass't U. S. Attorney; the defendant herein George S. Badders, being present in his own proper person and by D. R. Hite, James H. Harkless and E. D. McKeever, his attorneys, and the jury being called and all being present the trial of said case is proceeded with, and thereupon on motion of the United States Attorney it is ordered that leave be and the same is hereby given to endorse the name of W. E. Stickel a witness on the indictment herein.

Thereupon defendant orally moves the court to continue this case until the next term of this court for the reason it appears from the testimony of George A. Clark, a witness for the Government, that certain papers and documents heretofore in his possession as receiver of the Badders Clothing Company in bankruptcy are not now in his possession. Thereupon the court directs that the jury retire in charge of United States Marshal during the argument of said motion and thereupon the court having considered said motion and hearing the arguments of counsel and being well advised in the premises finds said motion should be and the same is hereby overruled, to which order of the court overruling said motion, defendant excepts. Upon the overruling of said motion defendant asks leave to file and present his motion in writing at some future date, as of this time, which leave is by the court granted. Thereupon the jury returns into open court in charge of United States Marshal and the trial of said case is proceeded with, and the hour of adjournment having arrived and the trial of said case not having been concluded, the jury is admonished of its duties by the court, retires in charge of the United States Marshal, and the further hearing of said case is postponed until Monday morning January 25th, 1915, at ten o'clock A. M.

138 In the District Court of the United States for the District  
of Kansas, First Division.

No. 4160.

UNITED STATES OF AMERICA, Plaintiff,

VS.

GEORGE S. BADDERS, Defendant.

*Application for a Continuance.*

Now again, on this January 23rd, 1915, comes the defendant, by his counsel, and shows to the court as follows:

I.

That, on January 9th, 1915, this defendant duly filed in this court and cause his petition to postpone the time of the trial of this action, and, among other things, therein alleged that George A. Clark, claiming to be receiver of the property of the Badders Clothing Company, on January 30th, 1914, took possession of certain books, papers, accounts, bills, invoices, correspondence and other property and effects belonging to said Badders Clothing Company, including correspondence with a large number of Eastern wholesale houses, during the period beginning with the latter part of the year 1911, and down to January 21st, 1914; that, by reference, the allegations in said petition relative to said books, papers, accounts and correspondence, are made a part of this application.

II.

That, on or about Wednesday, January 20th, 1915, this Court made and entered an order directing the said George A. Clark to produce the books and papers referred to in said petition, at  
139 the Federal Court House in Kansas City, Kansas, and that the defendant herein and his counsel have full and free access to the same for the purpose of sustaining the matters alleged in said petition; that on this day, to-wit, Saturday, January 23rd, 1915, at about 10 o'clock in the forenoon, came the said receiver as a witness for the plaintiff herein, and testified, among other things, that he had packed all of the books and papers referred to in said petition in two packing cases, and stored the same in an office occupied by him until July 1st, 1914, and since used by him for storage purposes, which testimony relative to said packing and storing of said books and papers was at the time taken in shorthand by the stenographer reporting this case, and is hereby referred to as a part of this application; that the said George A. Clark further testified at said time that he had made search for the said packing cases containing said books and papers, and was unable to find them, and asserted that they were stolen, and that this search which he had made in obedience to the order of the Court was the first

information he had that they were not there; and further stated that he knew of the fact that the defendant herein, on January 9th, 1915, had filed said petition for postponement of the time of the trial of this action.

### III.

Thereupon, this defendant respectfully shows to the Court that the said books, papers, correspondence and other data were selected out of the residue of books and papers then in the hands of said George A. Clark, sometime about April 16th, 1914, and the said George A. Clark was by the defendant's counsel specially requested to carefully preserve the same; that, at the time this defendant made such request for the special care and preservation of said books, papers and data, this defendant had been informed  
140 against and was then under bail to appear and answer the charge of using the mails in aid of a scheme or device to defraud, which subsequently, on or about April 22nd, 1914, ripened into the indictment in this action, and at said time the Grand Jury of the United States which subsequently found the indictment herein, was in session considering the charges against this defendant.

### IV.

The defendant says that the books, papers and other data herein referred to as contained in said packing cases, and so selected by this defendant for preservation, consisted in part of the following:

(a) Daily reports of the business of the Badders Clothing Company, showing cash sales, collections, charges of amounts of merchandise received daily from wholesale houses, and classified as to clothing, furnishing goods, hats, caps, children's clothing, children's furnishings and similar matters; also amounts of money in bank at various times, amounts of deposits, amounts checked out and the purposes for which such checks were made, daily balances and similar data.

(b) Monthly reports made to Stein-Bloch Company; also to Alfred Decker & Cohn, showing in detail the exact condition of the business as to merchandise received, merchandise sold, profits thereon, condition of the bank-account, expenditures, cash on hand, and other similar matters.

(c) Comparative statement book showing the daily, weekly and monthly condition of the business of said Badders Clothing Company, comparing the same with previous weeks and months since the Badders Clothing Company began business under that name, and since the connection of this defendant therewith.

141 (d) Duplicate copies of all orders for clothing, furnishing and similar goods, showing in detail the sizes of the same, style, quality, quantity and wholesale price, as to each kind of articles; orders made in the spring showing goods ordered for fall, and orders made in the fall showing orders for the spring.

(e) Swatches of cloths, showing color, quality, etc., of all suits



and overcoats of all kinds and descriptions carried or expected to be carried in stock by said Clothing Company.

(f) Stock books showing in detail each shipment of goods received, from whom received, with lot number of the goods, cost price, selling price, character of the merchandise, whether clothing, hats, caps, neckwear, underwear, shirts, vests, collars, jewelry, handkerchiefs, mufflers, and the like, the exact number of each article received, from whom received and by whom manufactured, together with the terms of sale, terms of payment, as to when same would become due, and also discounts.

(g) Sales slips, showing each individual sale during the sale referred to in the indictment herein of December, 1913, by days, weeks and total for the whole time.

(h) Cashier's charge slips for each day during the entire period of this defendant's connection with said Badders Clothing Company, showing charges to each account for every article of merchandise, whether sold in bulk or otherwise, leaving the storeroom of said Clothing Company, whether sold for cash or thereafter to be accounted for, or accounted for by cash sale slips.

(i) Also complete records and data covering goods ordered for a sale by said Clothing Company in the fall of 1911 similar to the alleged sale referred to in the indictment herein, showing goods ordered for both of such sales, the amount thereof, the quality and character, from whom purchased, by whom manufactured, terms of sale, as to when the same would become due, with discounts and the like.

(j) Original invoices received from wholesale houses with whom said Clothing Company dealt, covering the periods of the two sales referred to herein, one in the fall of 1911, and the other in December, 1913, referred to in the indictment herein, which original invoices were furnished to said Clothing Company by said persons, firms and corporations with whom it dealt, and contained full and complete data as to the articles sold, the prices thereof, the terms of sale, amount of discounts and when the amount of such purchases would become payable, and the same were furnished by said wholesale houses to said Clothing Company with reference to the receipt of goods purchased by said Clothing Company from such wholesale houses, and also containing the retailer's selling price noted thereon by the defendant herein opposite the wholesale price appearing on said invoices, as to each article therein mentioned.

(k) Correspondence covering the period of the two sales herein mentioned, between the said Clothing Company and the persons from whom it purchased goods, showing orders and changes therein, cancellations of orders, directions concerning time of payment, mode of shipment, and other data relating to the dealings between said Clothing Company and those with whom it dealt, including some of the persons, firms and corporations mentioned in the indictment herein: from which correspondence it will appear that the dealings by said Clothing Company with the persons, firms and corporations from whom it purchased goods, were the same in respect of the sale referred to in the indictment to a previous sale of the same gen-

eral character held by said Clothing Company in the fall of 1911.

143 And, thereupon the defendant avers that the aforesaid documentary evidence would demonstrate in the trial of this action that the dealings and transactions between the Clothing Company and its creditors, during the time of this defendant's connection with said Clothing Company, were freely and openly stated and communicated to said creditors, and from which it would appear that they were conversant with substantially all of his dealings and transactions, for that it will appear from said data that, at the request of the Stein-Bloch Company, said Clothing Company furnished daily reports to said Stein-Bloch Company of its condition, business, and sales, and with the consent and by the direction of the said Stein-Bloch Company, referred all persons with whom said Clothing Company dealt in the purchase of goods, to said Stein-Bloch Company for information concerning the financial condition, business and affairs of said Clothing Company.

## VI.

And thereupon the defendant further shows to the Court that upon this date, for the first time, he learned of the loss, through no fault, negligence or act on his part, of the said packing cases, containing said books, papers and data, and, for want of time, is unable to investigate fully and determine the means by which the evidence appearing upon the face of such papers hereafter may be supplied; that no opportunity yet has been afforded the defendant on his own account to make search for the purpose of discovering the whereabouts of the said packing cases, books and other data, and for want of time the defendant has been unable to make such search; that the defendant, having filed his said petition for postponement of the trial, because, among other things, he desired to examine and have produced in evidence said data, on January 9th, 1915, confidently relied upon the assurance that the same would be produced for his inspection, and were in the hands of said George A. Clark; but the defendant avers that, in the event said documents are lost beyond recovery, then this defendant, as to some of the matters herein referred to, believes that he can supply such loss by the testimony of wholesale houses with whom said Clothing Company dealt, in whose possession your defendant would expect to find, and believes that he would find, original letters from said Clothing Company to such wholesale houses, the copies of which are in said packing cases; also copies of invoices or data from which copies could be made up, daily and monthly reports made by said Clothing Company to some of its creditors and persons with whom it dealt, and particularly the Stein-Bloch Company, of Rochester, New York, and Alfred Decker & Cohn, of Chicago, Ill., and, also, by diligent inquiry of former employees of said Clothing Company and of other persons, supply portions at least of the lost information contained in some of the documents herein referred to.

## VII.

The necessity for the attendance of the defendant upon the court during the entire progress of trial, if the trial is now proceeded with, renders it impossible for this defendant personally to give attention to a proper search for said packing cases, books, papers and data, which defendant believes by diligent search may be located and found; that defendant is now setting on foot, through a detective agency, an exhaustive search for said missing documents, and hopes and believes that they may yet be found; that, until they are found or their irretrievable loss established, this defendant cannot safely proceed with the trial of this case, either with respect to the cross-examination by his counsel of witnesses produced by the plaintiff or in the preparation of his defense; and, on the other

145 hand, that if it be established that said packing cases, books, papers and data cannot be found, this defendant cannot safely proceed with the cross-examination of the plaintiff's witnesses in respect of the transactions of said Clothing Company or in the preparation of his defense, or the procuring of his evidence without the data afforded by the testimony hereinbefore referred to, which this defendant would have to take to supply such loss.

## VIII.

And thereupon this defendant further shows to the Court that, unless time and opportunity is given to find the said books, papers and data contained in said packing cases so claimed to be lost by the receiver appointed by this Court in another case in bankruptcy, or to supply secondary evidence establishing the contents of such lost or mislaid documents, if this trial is now proceeded with, this defendant may be forced, by the situation in which he has been thus placed without fault on his part, to waive his constitutional privilege of refusing to testify in the course of this trial, and be compelled to go upon the witness-stand to establish the contents of writings which the defendant believes can either be produced within a reasonable time, or their contents supplied by secondary evidence obtainable in the manner and circumstances hereinbefore related, and thus be deprived of the testimony hereinbefore mentioned or forced to go upon the witness-stand himself, and, if forced to go upon the witness-stand himself, be deprived of the corroborative force and effect of the contents of said documents.

Now, in this situation, this defendant claims and asserts the protection of the Constitution of the United States, and particularly that part of the 4th amendment declaring that no person shall be compelled to be a witness against himself, and which protects this

146 defendant from furnishing any information or testimony which might tend to criminate him, and which affords this defendant the right that his failure to go upon the witness stand shall not be interpreted or construed, directly or indirectly, as any evidence of or as having any bearing upon the question of his guilt or innocence, and protects this defendant against being de-

prived of his liberty and privilege without due process of law, and saves to this defendant his privileges and immunities as a citizen of the United States.

## IX.

This defendant further avers that this application is not made for the mere purpose of delay, but is made in good faith and solely for the purpose of enabling him properly to prepare his defense against the charge contained in the indictment herein, and to have a fair and impartial trial of the issues presented by said indictment, and a full and fair opportunity to make his defense thereto.

## X.

This defendant further says that he believes that, if the trial of this action be postponed for a reasonably sufficient time to enable a proper search for said missing books, papers and data, to be made, the same may be discovered, and, in the event that it be ascertained that they cannot be found, for an additional reasonable time for this defendant to procure secondary evidence of their contents so far as possible, that he will be able to supply in the main, and to a great extent at least, the testimony the benefit of which he is deprived by the sudden and unexpected event that said books, papers and data would not and will not be now produced by said George A. Clark under the order of this court.

Wherefore, the defendant respectfully prays that this Court postpone this trial for a reasonable time, to enable the defendant to prosecute a search for said missing documents, which defendant intends to make for the purpose of discovering the same, and in the event, after a reasonable time, and diligent search therefor, this defendant is unable to discover the same, such additional time as may be reasonably necessary for the purpose of supplying secondary evidence of the contents of the books, papers and data hereinbefore referred to, by the taking of testimony of firms, persons, corporations and other persons with whom said Badders Clothing Company had dealings.

JAS. H. HARKLESS.  
EDWIN D. McKEEVER.  
D. R. HITE.

UNITED STATES OF AMERICA,

*Western District of Missouri, Jackson County, ss:*

George S. Badders, being first duly sworn, on his oath deposes and says, that he has read the foregoing application; and knows the contents thereof, and that the statements contained therein are true, according to the best recollection of affiant as to the contents of said packing cases, books, papers and data mentioned in said application; and, as to all other matters stated therein, that the same are true.

GEORGE S. BADDERS.

Subscribed and sworn to before me this January 25th, 1915.  
My commission will expire Oct. 24, 1917.

[SEAL.]

EFFRAIM M. FUQUA,

*Notary Public, Jackson County, Missouri.*

Endorsed: No. 4160. United States of America vs. George S. Badders. Application for Continuance. Filed as of date Jan. 23rd, by order of the court. Morton Albaugh, Clerk.

148 In the District Court of the United States, District of Kansas, First Division.

No. 4160.

UNITED STATES OF AMERICA, Plaintiff,

VS.

GEORGE S. BADDERS, Defendant.

*Affidavit on Motion for Continuance.*

UNITED STATES OF AMERICA,

*District of Kansas, ss:*

I, C. C. Coulson, being first duly sworn, under oath state:

That I was in the employ of the Badders Clothing Company from November, 1912, up to the time that the store closed, and that from March, 1913, just after Mr. Frankenstein had left the store, I had charge of the keeping of the books in the ledger and made the entries in a ledger belonging to the Badders Clothing Company, which is marked Exhibit 8 in the bankruptcy case, against said company, which said ledger is hereby made a part of this affidavit, and referred to as such; that I made the entries in said book about the end of each month's business, and that they were made from the stock books of said company, and the cashier's charge slips for each day during the month, and check stubs of said company made by Mr. Badders. That I know that said amounts as shown in the ledger referred to herein are true and correct, as shown by the said monthly cashier's sheets and statement of business, and the charge slips and check stubs.

C. C. COULSON.

Subscribed and sworn to before me this 25th day of January, A. D. 1915.

[SEAL.]

MORTON ALBAUGH, *Clerk.*

149 Endorsed: No. 4160. United States vs. George S. Badders. Affidavit of C. C. Coulson on motion for continuance. Filed Jan. 25, 1915, Morton Albaugh, Clerk.

150 In the District Court of the United States, District of Kansas, First Division.

No. 4160.

UNITED STATES OF AMERICA, Plaintiff,

vs.

GEORGE S. BADDERS, Defendant.

*Affidavit on Motion for Continuance.*

DISTRICT COURT OF THE UNITED STATES,  
*District of Kansas, ss:*

Herbert T. Spiesberger, being first duly sworn on oath deposes and says:

That he is credit man and general manager of the firm referred to in the application for continuance in this case, of Alfred Decker, and Cohn, of Chicago, Illinois.

That he is personally familiar with the entire business of said concern and has been for six years just past.

Affiant further says that he has with him at this time in Kansas City, Kansas, and in the building in which this case is in progress, all correspondence pertaining to the credit matters had between his firm and The Badders Clothing Company, of Topeka, Kansas; that such correspondence, if there be any that he does not have at this time in Kansas City, Kansas, the same can and will be produced so that it may (be) accessible to the defendant and his counsel within a reasonable time after request and designation made.

Affiant further says that whatever of such correspondence 151 he has with him at this time at Kansas City, Kansas, the same may be immediately accessible to the defendant and his counsel, if they desire to see it.

Affiant further says that the Badders Clothing Company never made any daily and monthly reports to said Alfred Decker & Cohn, and there is not now and never has been any such reports.

HERBERT J. SPIESBERGER.

Subscribed and sworn to before me this 25th day of January, 1915.

[SEAL.]

MORTON ALBAUGH, *Clerk.*

Endorsed: No. 4160. U. S. of A. vs. George S. Badders. Affidavit of Spiesberger on motion for continuance. Filed January 25, 1915. Morton Albaugh, Clerk.

152 In the District Court of the United States for the District of  
Kansas, First Division.

No. 4160.

UNITED STATES OF AMERICA, Plaintiff,

vs.

GEORGE S. BADDERS, Defendant.

*Affidavit on Application for Continuance.*

DISTRICT COURT OF THE UNITED STATES,  
*District of Kansas, ss:*

George A. Clark, being first duly sworn, on oath says:

That he is the same person who testified in the above entitled cause before the court and jury upon January 23rd, 1915, relative to the disappearance of certain boxes containing books, papers, files and correspondence of the Badders Clothing Company; that he is receiver of said The Badders Clothing Company, appointed by the above named court as such in a proceeding in bankruptcy in said court in the month of January, 1914; that upon receiving said appointment he immediately duly qualified as such receiver, and as such official took possession of said The Badders Clothing Company, and of all things which he could find belonging to said corporation; that upon taking the possession of the property, books, papers and assets of said The Badders Clothing Company, the affiant was unable to find and has not to this day found certain of the books and records of said The Badders Clothing Company, including the minute books of stockholders' and directors' meetings, the stock certificate book, ledgers showing accounts with customers, cash  
153 books and sales books, together with sales slips and transcripts of the records, all of which had theretofore been used in conducting the business of said The Badders Clothing Company.

On January 30th, 1914, when affiant took possession of the rooms and property formerly held by The Badders Clothing Company, affiant noticed that said books and papers above referred to were not turned over. He thereupon made an oral demand upon George S. Badders, defendant herein, for the same, and in reply he, the said George S. Badders, said in substance that all of the company's books and papers were turned over except those counsel had advised him not to turn over; that some of said books had been turned over to the Bank of Topeka, and others held in a manner advised by counsel, and not to be disclosed to the receiver except on advice of his counsel, Mr. D. R. Hite. Afterward and on February 3rd, 1914, affiant made demand in writing upon said George S. Badders for said books and papers. Said demand was and has not been complied with.

Affiant further states that the only book of account found by him belonging to The Badders Clothing Company was a certain



ledger, which ledger is still in his possession, and which has at all times during the possession of this affiant been accessible to and is now accessible to the defendant and his counsel.

Affiant further says that he has never at any time refused either the defendant or his counsel access to any papers, books, records or documents of any sort in his possession, and has not refused said defendant or his attorneys an opportunity to make copies of any of such articles. Affiant further says that, on the contrary, he has at all times been courteous to the defendant in that regard, and has been willing to give him and his attorneys full access to everything of that kind in his possession. Affiant further says  
154 that in the selection of all such articles, — and that thereby the defendant knew what was in said boxes. Affiant further says that he personally packed all of said articles in said boxes himself, and knows that they were placed therein and securely nailed up. Affiant further says that the said boxes were placed in his office at 113 West Fifth Street, in the City of Topeka, Kansas, about April 20th, 1914, and that when he, the affiant, testified in this case upon January 23rd, 1915, he believed they were still in that building.

Affiant further states that this cause came on for trial in the early part of October, 1914, at Leavenworth, Kansas, at which time the Government had its witnesses present and announced ready for trial; that the defendant was there present with his counsel, but that, for some reason unknown to affiant, the trial was not had, but was continued to the January, 1915, term at Kansas City, Kansas. Affiant further says that at no time after said boxes were so placed in his office, either prior to the said October term at Leavenworth or prior to this date, has either the defendant or any of his attorneys asked permission to have access thereto, or to see the contents thereof, or to take copies from anything therein.

Affiant further says that he has made every effort possible to repossess himself of the said boxes, and the said papers and documents, so packed therein, all without avail, that he has offered a reward of \$500.00 for the return of such boxes, and evidence leading to the conviction of the party or parties who stole the same; that in the search for said boxes and their contents, the affiant, has been assisted by J. C. Lindland, Post Office Inspector of the United States, L. L. Kiene, Sheriff of Shawnee County, Kansas, the county wherein the city of Topeka is located, certain members of  
155 the police force of the city of Topeka, and L. S. Harvey, Assistant United States Attorney in the office of the United States Attorney for the district of Kansas. Affiant has made such efforts to locate and repossess himself of the said boxes that he has become satisfied and feels certain that the same cannot be found and cannot be produced.

GEORGE A. CLARK.

Subscribed and sworn to before me this 25th day of January,  
A. D. 1915.

[SEAL.]

MORTON ALBAUGH, *Clerk.*

Endorsed: No. 4160. United States vs. George S. Badders. Affidavit of George A. Clark on motion for a continuance. Filed January 25, 1915, Morton Albaugh, Clerk.

156 In the District Court of the United States for the District of Kansas, First Division.

No. 4160.

UNITED STATES OF AMERICA, Plaintiff,  
vs.  
GEORGE S. BADDERS, Defendant.

*Affidavit on Application for Continuance.*

DISTRICT COURT OF THE UNITED STATES,  
*District of Kansas, ss:*

George C. Guggenheim, General Manager of the Stein-Bloch Company, of Rochester, New York, being first duly sworn on oath says:

That the daily reports referred to in the application for continuance herein as having been made by defendant to the Stein-Bloch Company, are under his control, and can and will be furnished to defendant or his counsel, if so desired, upon this 25th day of January, 1915.

Affiant further says that, if there be any papers or documents in the possession of the Stein-Bloch Company which are desired by the defendant or his counsel in preparation of his defense in this case, that he will cheerfully produce the same if given a reasonable time and opportunity in which to do so, to the end that the same may be available to the said defendant and his attorneys.

GEORGE C. GUGGENHEIM.

Subscribed and sworn to before me this 25th day of January, A. D. 1915.

[SEAL.]

MORTON ALBAUGH, Clerk.

157 Endorsed: No. 4160. United States vs. George S. Badders. Affidavit of George C. Guggenheim on motion for continuance. Filed January 25, 1915. Morton Albaugh, Clerk.

158

No. 4160.

UNITED STATES  
vs.  
GEORGE S. BADDERS.

*Journal Entry of January 25, 1915.*

Now come the parties hereto same as before, the Government appearing by Fred Robertson, U. S. Attorney, and Francis M. Brady,

Ass't U. S. Attorney; the defendant, George S. Badders, being present in his own proper person and by D. R. Hite, James H. Harkless and E. D. McKeever, his attorneys, and the jury being called and all being present the trial of said case is proceeded with, at which time the defendant presents to the court in writing his application for continuance of this case, which was orally presented to the Court January 23, 1915, and in opposition to which motion the Government submits and files certain counter affidavits; upon the filing of such counter affidavits by the Government said motion is thereupon argued to the Court by counsel for the respective parties, and the Court being fully advised in the premises overrules the same to which ruling the defendant excepts which exception is by the Court allowed; and the hour of adjournment having arrived and the trial of said case not being concluded, the jury is admonished of its duties by the court, retires in charge of United States Marshal, and the further hearing of said case is postponed until tomorrow morning.

159

No. 4160.

UNITED STATES  
vs.  
GEO. S. BADDERS.

*Journal Entry Tuesday, January 26, 1915.*

Now come the parties hereto same as before, the Government appearing by Fred Robertson, U. S. Attorney, and Francis M. Brady, Ass't U. S. Attorney; the defendant George S. Badders, being present in his own proper person and by D. R. Hite, James H. Harkless and E. D. McKeever, his attorneys, and the jury being called and all being present the trial of said case is proceeded with, and the hour of adjournment having arrived and the trial of said case not being concluded, the jury is admonished of its duties by the court, retires in charge of United States Marshal, and the further hearing of said case is postponed until tomorrow morning.

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No. 4160.

UNITED STATES  
vs.  
GEO. S. BADDERS.

*Journal Entry January 27, 1915.*

Now come the parties hereto same as before, the Government appearing by Fred Robertson, U. S. Attorney, and Francis M. Brady, Ass't U. S. Attorney; the defendant, George S. Badders, being present in his own proper person and by D. R. Hite, James H. Harkless and E. D. McKeever, his attorneys, and the jury being called and all being present the trial of said case is proceeded with, and the

hour of adjournment having arrived and the trial of said case not being concluded, the jury is admonished of its duties by the court, retires in charge of United States Marshal, and the further hearing of said case is postponed until tomorrow morning.

*Journal Entry January 28, 1915.*

Now come the parties hereto same as before, the Government appearing by Fred Robertson, U. S. Attorney, and Francis M. Brady, Ass't U. S. Attorney; the defendant, George S. Badders, being present in his own proper person and by D. R. Hite, James H. Harkless and E. D. McKeever, his attorneys, and the jury being called and all being present the trial of said case is proceeded with. Thereupon the Government having introduced its evidence and rested the defendant herein presents his demurrer to the evidence adduced by the plaintiff as to each count separately, and thereupon the court having considered said demurrer and being well advised in the premises, it is Ordered, that the defendant's demurrer to the evidence offered and introduced by the Government in reference to the First, seventh, eighth, tenth, and twelfth counts of the Indictment and under said counts, be and the same each are hereby sustained and it is by the court further Ordered, that the defendant's demurrer to the evidence offered and introduced by the plaintiff as to each of the remaining counts of the indictment and under each of the remaining counts of the indictment be and each of

161 said demurrers are hereby overruled and denied to which ruling of the court in denying his demurrers to the evidence as to each of counts 2, 3, 4, 5, 6, 9, and 11, of said indictment the defendant at the time duly excepted and said exceptions were allowed.

Thereupon defendant proceeded with the introduction of his evidence and the hour of adjournment having arrived and the trial of said case not being concluded, the jury is admonished of its duties by the court, retires in charge of United States Marshal, and the further hearing of said case is postponed until tomorrow morning.

162 In the District Court of the United States for the District of Kansas, First Division.

UNITED STATES OF AMERICA, Plaintiff,

vs.

GEORGE S. BADDERS, Defendant.

**I.**

Demurrer to the Evidence as to the First Count of the Indictment.

Now comes the above named defendant, George S. Badders, and demurs to the evidence offered and adduced upon and under the

first count of the indictment, and for cause of demurrer states and assigns that the evidence adduced at the trial does not sustain and is not sufficient to sustain the allegations in said first count contained, nor sustain the charged offense therein set forth.

## II.

Demurrer to the Evidence as to the Second Count of the Indictment.

And now comes the above named defendant and demurs to the evidence offered and adduced upon and under the second count of the indictment, and for cause of demurrer states and assigns that the evidence adduced at the trial does not sustain and is not sufficient to sustain the allegations in said second count contained, nor sustain the charged offense therein set forth.

## III.

Demurrer to the Evidence as to the Third Count of the Indictment.

163 And now comes the above named defendant and demurs to the evidence offered and adduced upon and under the third count of the indictment, and for cause of demurrer states and assigns that the evidence adduced at the trial does not sustain and is not sufficient to sustain the allegations in said third count contained, nor sustain the charged offense therein set forth.

## IV.

Demurrer to the Evidence as to the Fourth Count of the Indictment.

And now comes the above named defendant and demurs to the evidence offered and adduced upon and under the fourth count of the indictment, and for cause of demurrer states and assigns that the evidence adduced at the trial does not sustain and is not sufficient to sustain the allegations in said fourth count contained, nor sustain the charged offense therein set forth.

## V.

Demurrer to the Evidence as to the Fifth Count of the Indictment.

And now comes the above named defendant and demurs to the evidence offered and adduced upon and under the fifth count of the indictment, and for cause of demurrer states and assigns that the evidence adduced at the trial does not sustain and is not sufficient to sustain the allegations in said fifth count contained, nor sustain the charged offense therein set forth.

## VI.

Demurrer to the Evidence as to the Sixth Count of the Indictment.

And now comes the above named defendant and demurs to the evidence offered and adduced upon and under the sixth count of the indictment, and for cause of demurrer states and assigns that the evidence adduced at the trial does not sustain and is not sufficient to sustain the allegations in said sixth count contained, nor sustain the charged offense therein set forth.

#### VII.

Demurrer to the Evidence as to the Seventh Count of the Indictment.

And now comes the above named defendant and demurs to the evidence offered and adduced upon and under the seventh count of the indictment, and for cause of demurrer states and assigns that the evidence adduced at the trial does not sustain and is not sufficient to sustain the allegations in said seventh count contained, nor sustain the charged offense therein set forth.

#### VIII.

Demurrer to the Evidence as to the Eighth Count of the Indictment.

And now comes the above named defendant and demurs to the evidence offered and adduced upon and under the eighth count of the indictment, and for cause of demurrer states and assigns that the evidence adduced at the trial does not sustain and is not sufficient to sustain the allegations in said eighth count contained, nor sustain the charged offense therein set forth.

#### IX.

Demurrer to the Evidence as to the Ninth Count of the Indictment.

And now comes the above named defendant and demurs to the evidence offered and adduced upon and under the ninth count of the indictment, and for cause of demurrer states and assigns that the evidence adduced at the trial does not sustain and is not sufficient to sustain the allegations in said ninth count contained, nor sustain the charged offense therein set forth.

#### X.

Demurrer to the Evidence as to the Tenth Count of the Indictment.

And now comes the above named defendant and demurs to the evidence offered and adduced upon and under the tenth count of the indictment, and for cause of demurrer states and assigns that the evidence adduced at the trial does not sustain and is not sufficient to sustain the allegations in said tenth count contained, nor sustain the charged offense therein set forth.

## XI.

Demurrer to the Evidence as to the Eleventh Count of the Indictment.

And now comes the above named defendant and demurs to the evidence offered and adduced upon and under the eleventh count of the indictment, and for cause of demurrer states and assigns that the evidence adduced at the trial does not sustain and is not sufficient to sustain the allegations in said eleventh count contained, nor sustain the charged offense therein set forth.

## XII.

Demurrer to the Evidence as to the Twelfth Count of the Indictment.

And now comes the above named defendant, and demurs to the evidence offered and adduced upon and under the twelfth count of the indictment, and for cause of demurrer states and assigns that the evidence adduced at the trial does not sustain and is not sufficient to sustain the allegations in said twelfth count contained, and sustain the charged offense therein set forth.

E. D. McKEEVER,  
D. R. HITE,  
JAS. H. HARKLESS,  
*Att'ys for George S. Badders.*

Jan. 28, 1915.

166      Endorsed: No. 4160. United States of America vs. George  
S. Badders. Demurrer to the Evidence. Filed Jan. 28,  
1915. Morton Albaugh, Clerk.

167      In the District Court of the United States for the District  
of Kansas, First Division.

THE UNITED STATES OF AMERICA, Plaintiff,

vs.

GEORGE S. BADDERS, Defendant.

Deposition of Witness Taken to be Used in an Action in the Above-entitled Court, wherein the United States of America is Plaintiff and George S. Badders is Defendant.

Plaintiff Appeared by L. S. Harvey, its Attorney, and Defendant Appeared by C. E. Gault, His Attorney.

And thereupon it was agreed by said attorneys in behalf of said parties that notice of the taking of this deposition is hereby waived. It is further stipulated and agreed by and between the plaintiff and the defendant, that in order to save time, all objections which might



be made to the questions and answers of the witness at the taking of this deposition, may be made in court at the time they are read in evidence.

L. S. HARVEY.  
C. E. GAULT.

And thereupon the said defendant produced as a witness John R. Mulvane, of lawful age, who being first duly sworn, deposeth and sayeth:

Direct examination.

Question- by Mr. Gault:

Q. State your name and residence?

A. John R. Mulvane, Topeka, Kansas.

Q. How long have you lived in Topeka?

A. Since 1868.

Q. In what business are you engaged?

A. In banking since 1870.

168 Q. With what bank are you now connected and in what capacity?

A. Bank of Topeka, President.

Q. Do you know the defendant, George S. Badders?

A. Yes.

Q. How long have you known him?

A. Oh, about ten years.

Q. Do you remember the circumstances of his embarking in the clothing business in Topeka some years ago?

A. Yes.

Q. Did he discuss with you his plans with reference to embarking in that business before he did so?

A. Yes, he did.

Q. Do you remember the conversations or conversations had with him at that time?

A. He expected to put up a capital of \$25,000.00, for the conduct of the business.

Q. Did he discuss with you the question as to whether you would assist him from time to time with credit?

A. Yes. We agreed to give him a reasonable line of credit.

Q. Did you from time to time while he was in charge of the Badders Clothing Company, extend to that company a line of credit in behalf of the Bank of Topeka?

A. We did.

Q. Do you remember how long he was in the clothing business in Topeka?

A. No, I don't.

Q. Were the transactions between the Bank of Topeka and George S. Badders satisfactory up to the time of the beginning of an action in bankruptcy about a year ago?

A. I think they were.

Q. Did you keep yourself informed as to the assets and liabili-

ties of The Badders Clothing Company and of George S. Badders, during the time you were transacting business with them?

A. As far as we could.

Q. Mr. Mulvane, assuming that in the year 1913 the outstanding capital stock of the Badders Clothing Company, was \$35,000.00 and that the company at that time was solvent, and that at least ninety per cent of the stock of the company was owned by George S. Badders, and further assuming that the capital stock of the company was increased at that time \$25,000.00, and that the consideration for the issuance of said increase of stock, consisted of a note signed by George S. Badders, and secured by the stock representing said increase, and also by all of the stock theretofore issued standing in the name of George S. Badders, the same being at least ninety per cent of the outstanding stock, and The Badders Clothing Company, in these circumstances had asked you for credit, and offered you as collateral the note of George S. Badders, for \$25,000.00, secured as I have described, would you have extended to them credit on the strength of that security, and if so, how much?

A. We would have extended credit, perhaps \$10,000.00, and considered it reasonable collateral.

Q. This in addition to credit already extended to the company?

169 A. Yes.

Mr. Harvey:

Q. Mr. Mulvane, when did Mr. Badders go into the Clothing business, if you know?

A. I don't know.

Q. You don't remember?

Q. You say you remember of a conversation you had with Badders at the time he went into the clothing business in which you agreed to extend him a reasonable line of credit?

A. Yes.

Q. Do you know about when you had that conversation?

A. That must have been when he was discussing going into the business.

Q. How much credit did you extend to him at that time?

A. I am not sure, but I think about \$5,000.00.

Q. Was that before the Badders Clothing Company was organized?

A. No, I think not, I think it was after.

Q. Badders had been in the clothing business prior to the organization of the Badders Clothing Company?

A. I think not.

Q. Mr. Badders' first venture in the clothing business was at the time of the failure of the Robinson, Marshall Clothing Company?

A. I think so.

Q. And the \$5,000.00 your bank loaned him at that time, was for the purpose of purchasing the stock with which he began business at that time?

A. I think it was the commencement of his business, or rather the aiding of the commencement of his business.

Q. As I understand you, Mr. Mulvane, you say you kept yourself informed as to the assets and liabilities of George S. Badders and of The Badders Clothing Company?

A. Well, reasonable information, such as is ordinarily current in business.

Q. How did you get that information, concerning the condition of Mr. Badders and the clothing business?

A. Usually from him.

Q. Did he furnish you with written reports at regular intervals as to the financial condition of his business?

A. I could not tell you whether he did or not, now, without looking it up.

Q. Whatever report you had concerning the financial affairs of Mr. Badders and his business was furnished you by Badders, was it?

A. Yes, Sir.

Q. Did any of the officers or directors of The Badders Clothing Company ever furnish you any statement of the financial condition of The Badders Clothing Company?

A. I think not.

Q. Mr. Mulvane, in answering Mr. Gault's question in which he assumed that in the year 1913 the outstanding capital stock of The Badders Clothing Company was \$35,000.00, and that the company at that time was solvent, and that at least ninety per cent of the stock of

the company was owned by George S. Badders, and further  
170 assuming that the capital stock was increased at that time, \$25,000.00, and that the consideration for said increase of stock, consisted of a note signed by George S. Badders, and secured by the stock representing said increase, and also by all of the stock theretofore issued standing in the name of George S. Badders, the same being at least ninety per cent of the outstanding stock, and The Badders Clothing Company in these circumstances, had asked you for credit, and offered you as collateral the note of George S. Badders, for \$25,000.00, secured as described you would have extended credit to perhaps \$10,000.00, and considered it reasonable collateral? Now Mr. Mulvane, I will ask you that if at the time the defendant gave the note for \$25,000.00 in question, that if the Badders Clothing Company was at that time involved financially, and that Badders as its President and managing officer, was intending to incur large additional liabilities, so that at that time the said Company was in debt to its creditors \$85,000.00, would you say that the company in those circumstances — to a \$10,000.00 credit on the note with no other security than the stock representing the amount of the increase?

A. We are presuming that the company had \$35,000.00 paid in capital, and was in good condition; such a loan would have been justifiable.

Q. In answering Mr. Gault's question in the circumstances you suppose, you base your answer then upon what Mr. Badders had told you with reference to the financial affairs of his company?

A. I base my answer on the company being solvent and having \$35,000.00 paid in capital.

Q. Mr. Mulvane, do you know of any property owned by George Badders, at the time he made this note of \$25,000.00 that would justify credit of \$10,000.00 or any other sum?

A. If the concern was solvent and had \$35,000.00 capital that would justify a loan. I don't know of his having any other property.

Q. Was you ever a stockholder, Mr. Mulvane, in the Badders Clothing Company?

A. No, sir.

Q. Mr. Mulvane, do you know that at the time George Badders gave this note for \$25,000.00, that he owed the German-American State Bank of Topeka, a note of \$5,000.00, and that the note had been put in judgment, and had not been collected?

A. I knew nothing about it.

Q. Do you know that at the time Badders gave this note for \$25,000.00 that he personally owed the Stein-Bloch Clothing Company, of Rochester, New York, approximately \$7,000.00?

A. I know nothing whatever of it.

Q. Did you know that at the time Badders made this note of \$25,000.00 that he claimed to be in debt to his father-in-law W. A. Byers, in a sum variously given at \$11,500.00 to \$16,500.00?

A. Know nothing about it whatever.

Q. Assuming, Mr. Mulvane, that George S. Badders and The Badders Clothing Company, was in debt to the amount I have indicated, and owed other large amounts to wholesale houses, at the time he increased the capital stock of his company for which he executed the note for \$25,000.00, would you still say that at that time he would be entitled to a credit of \$10,000.00, and that the stock of the company would be reasonable collateral as security for such credit?

A. With knowledge of those facts, I would not.

Q. I believe that's all.

Redirect.

Mr. Gault:

Q. Mr. Mulvane, during the time The Badders Clothing Company was in business in this city, did you consider that the ownership of a majority of the stock in that company would entitle the owner to a reasonable credit on his own account?

A. I would.

J. R. MULVANE.

I, C. L. Cushing, Notary Public within and for the county of Shawnee in the State of Kansas, do hereby certify that the above named John R. Mulvane, the witness whose name is subscribed to the foregoing deposition, was by me first duly sworn to testify the truth, the whole truth, and nothing but the truth, in the case aforesaid, and that the deposition by him subscribed was reduced to writing by

me and that the said deposition *was* so reduced to writing and subscribed by the respective witness in my presence, and the same was taken on the 28th day of January, A. D. 1915, between the hours of 8 o'clock a. m. and 6 o'clock p. m. of said day, and at the office of Mulvane & Gault in the Town of Topeka, in the county of Shawnee and State of Kansas, and that I am not an attorney for either of said parties.

[SEAL.]

C. L. CUSHING,  
Notary Public.

My commission expires April 10, 1915.

10¢ Revenue Stamp affixed.

Endorsed: No. 4160. Filed January 28, 1915. Morton Albauer, Clerk.

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No. 4160.

UNITED STATES  
vs.  
GEO. S. BADDERS.

*Journal Entry January 29, 1915.*

Now comes the parties hereto same as before, the Government appearing by Fred Robertson, U. S. Attorney and Francis M. Brauer, Ass't U. S. Attorney, the defendant George S. Badders, appearing by his own proper person and by D. R. Hite, James H. Harkless and E. D. McKeever, his attorneys, and the jury being called and being present the trial of said case is proceeded with, and the hour of adjournment having arrived and the trial of said case not being concluded the jury is admonished of its duties by the court, retires in charge of United States Marshal and the further hearing of said case is postponed until tomorrow morning.

173 In the District Court of the United States, First Division

UNITED STATES  
vs.  
GEORGE S. BADDERS.

*Motion to Direct Verdict.*

And now upon the close of the evidence introduced in this case and after the parties finally rest, comes the defendant and moves the court to direct the jury to return their verdict acquitting the defendant of the charges in the indictment under the second, third, fourth, fifth, sixth, ninth and eleventh counts thereof, so moving the court as to each count separately, for the following reasons, to-wit:

## I.

That the evidence does not establish the allegations in either or any of said counts; and is insufficient to establish that the defendant has committed an offense against the laws of the United States.

## II.

Because the judgment of the court sustaining defendant's demurrers to the plaintiff's evidence adduced in support of the first, seventh, eighth, ten and twelfth count of the indictment herein, concludes the plaintiff as to each of the other counts therein, for that plaintiff's causes of action if any, *they have* against the defendant under the several counts in said indictment constitutes but one, if any, cause of action, and directed verdicts as to the first (1) Seventh (7) eighth (8) tenth (10) and twelfth (12) counts, following said judgment sustaining said demurrers amounts to a legal acquittal of the defendant as to the remaining counts.

JAS. H. HARKLESS,

E. D. McKEEVER,

D. R. HITE,

*Att'ys for Defendant.*

174      Endorsed: No. 4160. U. S. vs. Badders. Defendant's motion to Direct Verdicts as to certain counts. Filed January 30, 1915. Morton Albaugh, Clerk.

175      In the District Court of the United States for the District of Kansas, First Division.

UNITED STATES OF AMERICA, Plaintiff,

vs.

GEORGE S. BADDERS, Defendant.

Comes now the defendant, and respectfully prays the court on behalf of the defendant to charge the jury in the above entitled cause as follows:

## I.

The Court charges and instructs the jury that the defendant in this case is not on trial for the failure, neglect, or refusal to pay any of his debts, nor for having given checks of any kind or character upon banks, or to creditors, that have not been paid; nor for any breach of promise or inability to pay debts at any time; nor upon any charge of failing to pay up any capital stock that he may have subscribed to the Badders Clothing Company; nor upon any charge of selling any of his property or goods at any price, or for any purpose, and that as far as this case is concerned those questions are wholly immaterial except in so far and only as such matters may bear, or have a bearing upon the charge in the indictment that the defendant had devised a scheme and artifice to defraud his creditors at the time charged in the indictment; and that the inquiry into

these matters become necessary only as bearing solely and only upon such intent, and are not to be considered or weighed by the jury for any other purpose.

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## II.

In reference to the \$25,000.00 note offered in evidence, the Court instructs and charges the jury that if said note was given by George S. Badders to the Badders Clothing Company in payment of an increase in the capital stock of said corporation to the extent of \$25,000., and you believe from the evidence that said note was given in good faith by the defendant Badders for that purpose, and that said Badders at the time he executed said note was solvent, and said note a marketable asset, then you are instructed that said increased capital stock was paid up and constituted a capital asset of said corporation and was a sufficient payment to its capital stock so increased.

## III.

The Court charges and instructs the jury that if they find from the evidence that the money taken by the defendant Badders from the sale and disposition of his stock of goods, was by said Badders paid out, or caused to be paid out to his creditors, or in payment of other bona fide indebtedness and expenditures in good faith, and with the intent on the part of said Badders to apply the same in good faith to the liquidation of his debts and bona fide expenses incurred, then you are instructed that no presumption can arise therefrom, or because of such acts and conduct of the defendant, that he intended to, or had devised a scheme or artifice to defraud, as charged in the indictment, and if he did so pay out the same in good faith, then you may take such facts into consideration also in passing upon the question as to whether he intended at the time charged in the indictment, to devise a scheme or artifice to defraud his creditors as therein charged.

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## IV.

The Court instructs and charges the jury that even though they may find that the defendant may have taken a number of boxes of goods from the store in the month of December and shipped the same out of the city of Topeka and stored the same elsewhere, and that all of said goods were returned afterwards to the store and re-placed therein, and constituted a part of the stock turned over to the receiver, then you are instructed that so far as the creditors are concerned the defendant had the right to do so and that the same constituted no offense in itself, and that the defendant cannot be found guilty of any crime or offense in said transaction of itself, and that such intent was competent in the case only and solely as bearing upon the question as to whether the defendant intended to and devised a scheme or artifice to defraud his creditors as and at the time charged in the indictment; and in passing upon this question the jury may take into consideration the evidence tending to show that the defend-



ant did so return the goods, and that he charged the value thereof to his own personal account upon the books of the corporation at the time they were taken out.

## V.

The Court charges and instructs the jury that it was no crime or offense so far as this case is concerned, as to whether the corporation itself, or the corporation at the instance of the defendant, declared the dividend shown in the evidence, or that the defendant was instrumental in causing the dividend to be declared; nor as to how or in what manner it was declared, but that such facts become material only and solely in passing upon the question as to whether the defendant had devised a scheme and artifice to defraud his creditors at the time as charged in the indictment.

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## VI.

The Court charges and instructs the jury that there is no evidence in this case from which the jury are justified in finding that any dividend was ever paid or received by the defendant Badders, or that and commissions upon the sale of capital stock, or upon the sale of merchandise in excess of \$50,000, was ever paid to or received by the defendant.

## VII.

The Court instructs the jury that any and all evidence in the case, showing, or tending to show that a dividend was declared upon the capital stock of the corporation, or commissions were agreed to be paid for the sale of goods or capital stock, or that increased salaries were agreed to be paid by the corporation to its officers, and to the defendant was not to be admitted in evidence for the purpose of showing, nor is the same to be considered by the jury as any crime or violation of law in this cause, but was admitted solely and only at the same might be considered by the jury as bearing upon the questions as to whether the defendant had devised a scheme or artifice to defraud his creditors as and at the time charged in the indictment and they cannot be considered by the jury for any other purpose.

## VIII.

The Court instructs and charges the jury that the evidence tends to show that the defendant purchased some municipal bonds, afterwards disposed of the bonds and received cash, either partly in currency or partly in gold, from the Trust Company, constituted at the time or offense against the law on the part of the defendant, and that as the creditors are concerned, or affected this case, he had a right to do so, and that such evidence was admitted solely and only for the consideration of the jury in passing upon the question as to whether the defendant devised a scheme or artifice to defraud his creditors as and at the time charged in the indictment.

## IX.

The Court instructs and charges the jury that it is a matter of no importance in this case as to whether the defendant paid some of his creditors and left others unpaid, or as to whether he preferred one or more creditors as against others, and that if such creditors as he did pay were paid in good faith and for the purpose of discharging their indebtedness, and any and all evidence with reference to the payment of any one or more of the creditors, or the refusal to pay any one or more of the creditors, and all evidence as to the acts or conduct of the defendant in reference to the same were admitted in evidence solely and only for the consideration of the jury as bearing upon the question as to whether the defendant intended to, or devised a scheme or artifice to defraud his creditors, as and at the time charged in the indictment.

## X.

The Court instructs and charges the jury that in passing upon the question in this case as to whether the defendant devised a scheme or artifice for the purpose of defrauding his creditors, as charged in the indictment, the jury are instructed that if from all of the evidence in the case it shall appear to them that the acts and conduct of the defendant were as consistent with honesty and good faith as with the purpose and intention to defraud, as charged in the indictment, then the jury are instructed that the defendant is not guilty, and they should return a verdict in his favor.

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## XI.

The Court instructs the jury with reference to the charge that the defendant mailed the letters set out in the indictment, that if they find from the evidence that the same were mailed under pressing circumstances and financial embarrassment confronting him at the time, for the purpose, and with the intent to secure extension of time, or additional goods, in good faith, for his sacrifice sale, and with the expectation and intent that he could and would be able to meet his liabilities incurred, and were not mailed with an intent on his part in furtherance of any scheme or artifice to defraud his creditors, or to aid in doing so, then you are instructed that the defendant is not guilty in this case.

## XII.

The Court charges and instructs the jury that no charge of a scheme or artifice to defraud a creditor can be sustained against the defendant as to any creditor who may have shipped and billed his goods to the corporation prior to the time of the mailing of the letters mentioned in the indictment to such creditor.

## XIII.

The Court instructs the jury that if they have a reasonable doubt as to the guilt of the defendant, then they must return a verdict for the defendant, and in this connection the jury are instructed that

each individual juror must be convinced beyond a reasonable doubt of the guilt of the defendant before they should return a verdict of guilty.

## XIV.

The Court instructs and charges the jury that on January 22, 1914 the defendant was served with an injunction prohibiting him  
181 from disposing of any of the money or property of the Badders Clothing Company, and from the date of the service of that injunction upon the defendant he was prohibited from paying any such debts, and no inference against the defendant can be drawn from the fact that none of the debts of said Clothing Company were paid or attempted to be paid after that time, or that he refused to pay any creditors of the Clothing Company who demanded payment of their claims, after that date.

## XV.

The Court instructs the jury that if you find from the evidence that in the months of December 1913 and January 1914, the Badders Clothing Company was in fact insolvent, and was being pressed by its creditors for payment of their claims, then you are instructed that it could not make payment through its President, or otherwise, of any one or more of said claims, or allow an attachment to stand without being released, for a period of five days, except at the risk of being adjudged a bankrupt.

## XVI.

The Court instructs the jury that if you find from the evidence that the immediate cause of the failure of the defendant to pay, or cause to be paid, the debts of the Badders Clothing Company arising from the purchase of the goods referred to in the indictment was the conditions confronting him at the time demands for payment for such goods were made upon him, and that except for such conditions he would have paid for such goods, then your verdict must be for the defendant.

## XVII.

The Court instructs the jury that the indictment in this action charges the defendant with having devised a scheme or artifice to defraud the several persons, partnerships and corporations named  
82 in the indictment, and other persons, to the grand jurors unknown, of goods, wares, merchandise and property of value, by means of false and fraudulent pretenses and promises, and you are therefore instructed that evidence tending to show that the defendant converted money of the Badders Clothing Company to his own use does not sustain this charge.

## XVIII.

The Court instructs the jury that the stock of goods in question was the property of the Badders Clothing Company, and not of the creditors, and the Badders Clothing Company had the right to sell the same, or any portion of the same, for any price that they saw fit, or to otherwise dispose of the same as they saw fit, and the creditors have no right to interfere therewith, so far as this case is concerned, and any and all evidence introduced with reference to that subject was admitted solely and only for the purpose of bearing upon the question as to whether the defendant devised a scheme or plan to defraud his creditors as and at the time stated in the indictment.

## XIX.

The Court instructs the jury that as to any sales of merchandise made to Voiland, to Mills, or to August, that the defendant had the right to sell said goods to said parties when he did sell them, and to sell them for such price as he saw fit, and that the evidence concerning those matters was admitted only for the purpose, and as bearing upon the question as to whether the defendant devised a plan or artifice to defraud his creditors as and at the time stated in the indictment, and in this connection you are further instructed that if said goods were sold at a reasonable price under the conditions existing at the time, having regard to the character of the goods, then you are instructed that no presumption  
183 of improper intent can arise therefrom as against the defendant.

## XX.

The Court instructs the jury that if you find from the evidence that the Badders Clothing Company, after the completion of the sale, was in good faith intending to continue in business, and had made arrangements for new quarters, and cutting down the space in their old quarters, and ordering fixtures and arranging for the continuance of business, then you are instructed that you must take such facts into consideration in passing upon the question as to whether or not the defendant had any intent to defraud creditors as and at the time charged in the indictment.

## XXI.

The Court instructs the jury that any transactions, or conduct by the defendant Badders as between himself and the Badders Clothing Company, or the handling of its cash funds, or goods, in the manner shown by the evidence, is a matter of no importance to the Badders Clothing Company, and the question as between the Clothing Company and Badders is not at issue in this case, and he cannot be convicted for any transactions had between himself and the Company, or for any alleged breach of duty between himself and the Badders Clothing Company, and any and all transactions

between himself and the Badders Clothing Company were admitted in evidence only and solely as bearing upon the question as whether the defendant intended to defraud the creditors at the time, and as charged in the indictment and is to be considered by them solely and alone as bearing upon that question.

## XXII.

184 The Court instructs the jury that it appears in evidence that in 1911 a previous bankrupt sale was conducted by Badders Clothing Company in the same building at Topeka, Kansas. You are instructed, therefore, that if you find at said sale that Badders had informed his creditors thereof, and that the same was freely advertised as a sacrifice sale in the newspapers, and resulted in a sale of goods so that the Badders Clothing Company was enabled, as a result thereof, to pay up all of its debts and continue in business thereafter, and that said sale was conducted in a similar manner to the sacrifice sale in question, made in December 1913, and that the sale in December 1913 was put on and conducted under similar circumstances and conditions as to that of 1911, then you may take such facts into consideration in passing upon the question as to whether the defendant had devised any scheme or artifice as and at the time charged in the indictment, to defraud his creditors, as charged in the indictment.

## XXIII.

The Court charges and instructs the jury that even though they may find that the defendant did all of the things and performed all of the acts charged in the indictment against him in the manner and form as charged therein, yet you are instructed that said acts and transactions do not of themselves prove that the defendant had the intention to form a scheme or artifice to defraud his creditors, as charged in the indictment, and notwithstanding you find all of said facts to be true, yet defendant cannot be convicted unless you find that he had an intent as charged in the indictment to defraud his creditors, and that the doing or performing of all or any of the acts charged in the indictment constituted no crime on the part of the defendant unless the jury further believe that it was the original intent of defendant at the time and in the manner charged in the indictment to defraud his creditors and persons, as therein charged.

## XXIV.

185 The Court charges and instructs the jury that in considering the question as to what became of the funds taken in by the Company at the sale, they may take into consideration the amount shown from the evidence to have been necessarily expended by the defendant in defending the corporation in the bankruptcy proceeding, as well also as the expenses incident to the sale, and any and all amounts that the corporation may have paid out to creditors,

or paid in liquidation and satisfaction of debts for which the corporation might be liable.

Endorsed: #4160. Instructions requested by Defendant. Filed January 30, 1915. Morton Albaugh, Clerk.

186

No. 4160.

UNITED STATES

VS.

GEO. S. BADDERS.

*Journal Entry, January 30, 1915.*

Now come the parties hereto same as before, the Government appearing by Fred Robertson, U. S. Attorney and Francis M. Brady, Ass't U. S. Attorney; the defendant George S. Badders appearing in his own proper person and by D. R. Hite, James H. Harkless and E. D. McKeever, his attorneys, and the jury being called and all being present the trial of said case is proceeded with, and thereupon upon the close of the evidence introduced in this cause and after the parties finally rest, the defendant moves the court to direct the jury to return verdicts acquitting the defendant of the charges in the indictment under the second, third, fourth, fifth, sixth, ninth and eleventh counts thereof, said motion being presented as to each count separately and the court having considered said motion and being well advised in the premises, it is Ordered that said motions, as to each count separately, be and the same is hereby overruled, to which ruling of the court defendant excepts as to each motion and thereupon the jury having heard the evidence, arguments of counsel and the instructions of the court, retires in charge of its sworn bailiff to consider its verdict herein, and afterwards said jury returns into open court in charge of its sworn bailiff and through its foreman, presents the following verdicts, towit:

"In the District Court of the United — for the District of Kansas.

No. 4160.

THE UNITED STATES

VS.

GEORGE S. BADDERS.

We, the jury in the above entitled cause, by direction of the Court, find the defendant not guilty, as charged in the First, Seventh, Eighth, Tenth and Twelfth Counts of the indictment herein.

W. K. HANNA, Foreman."

187 "In the District Court of the United States for the District of Kansas.

No. 4160.

UNITED STATES

vs.

GEORGE S. BADDERS.

We, the jury in the above entitled cause, duly impaneled and sworn, upon our oaths, find the defendant guilty, as charged in the second count of the indictment herein.

W. K. HANNA, *Foreman.*"

"In the District Court of the United States for the District of Kansas.

No. 4160.

UNITED STATES

vs.

GEORGE S. BADDERS.

We, the jury in the above entitled cause, duly impaneled and sworn, upon our oaths, find the defendant guilty as charged in the Third count of the indictment herein.

W. K. HANNA, *Foreman.*"

"In the District Court of the United States for the District of Kansas.

No. 4160.

UNITED STATES

vs.

GEORGE S. BADDERS.

We, the jury in the above entitled cause, duly impaneled and sworn, upon our oaths, find the defendant guilty, as charged in the Fourth count of the indictment herein.

W. K. HANNA, *Foreman.*"

"In the District Court of the United States for the District of Kansas.

188 No. 4160.

THE UNITED STATES

vs.

GEORGE S. BADDERS.

We, the jury in the above entitled cause, duly impaneled and sworn, upon our oaths, find the defendant guilty, as charged in the Fifth Count of the indictment herein.

W. K. HANNA, *Foreman.*"



"In the District Court of the United States for the District of Kansas.

No. 4160.

THE UNITED STATES

vs.

GEORGE S. BADDERS.

We, the jury in the above entitled cause, duly impaneled and sworn, upon our oaths, find the defendant guilty, as charged in the Sixth count of the indictment herein.

W. K. HANNA, *Foreman.*"

"In the District Court of the United States for the District of Kansas.

No. 4160.

THE UNITED STATES

vs.

GEORGE S. BADDERS.

We, the jury in the above entitled cause, duly impaneled and sworn, upon our oaths, find the defendant guilty, as charged in the Ninth count of the indictment herein.

W. K. HANNA, *Foreman.*"

"In the District Court of the United States for the District of Kansas.

No. 4160.

THE UNITED STATES

vs.

GEORGE S. BADDERS.

189 We, the jury in the above entitled cause, duly impaneled and sworn, upon our oaths, find the defendant guilty, as charged in the Eleventh Count of the indictment herein.

W. K. HANNA, *Foreman.*"

Thereupon it is by the Court Ordered that the defendant herein, George S. Badders, be and he is hereby remanded to the custody of the United States Marshal.

Thereupon comes said defendant by his counsel and prays the court for leave to file herein his motion for a new trial and in arrest of judgment, which leave is by the court granted and said motions are set for hearing on Tuesday, February 2, 1915, at ten o'clock A. M.



190 In the District Court of the United States for the District of Kansas.

#4160.

UNITED STATES  
vs.  
GEORGE S. BADDERS.

We, the jury in the above entitled cause, duly empaneled and sworn, upon our oaths, find the defendant guilty, as charged in the second count of the indictment herein.

W. K. HANNA, *Foreman*.

Endorsed: No. 4160. The United States vs. George S. Badders, Verdict. Filed January 30, 1915, Morton Albaugh, Clerk.

191 In the District Court of the United States for the District of Kansas.

#4160.

UNITED STATES  
vs.  
GEORGE S. BADDERS.

We, the jury in the above entitled cause, duly impaneled and sworn, upon our oaths, find the defendant guilty, as charged in the third count of the indictment herein.

W. K. HANNA, *Foreman*.

Endorsed: No. 4160. The United States vs. George S. Badders, Verdict. Filed January 30, 1915. Morton Albaugh, Clerk.

192 In the District Court of the United States for the District of Kansas.

No. 4160.

UNITED STATES  
vs.  
GEORGE S. BADDERS.

We, the jury in the above entitled cause, duly impaneled and sworn, upon our oaths, find the defendant guilty, as charged in the fourth count of the indictment herein.

W. K. HANNA, *Foreman*.

Endorse: No. 4160. The United States vs. George S. Badders, Verdict. Filed January 30, 1915. Morton Albaugh, Clerk.

193 In the District Court of the United States for the District of  
Kansas.

No. 4160.

UNITED STATES  
vs.  
GEORGE S. BADDERS.

We, the jury in the above entitled cause, duly impaneled and sworn, upon our oaths, find the defendant guilty, as charged in the fifth count of the indictment herein.

W. K. HANNA, *Foreman*.

Endorsed: No. 4160. The United States vs. George S. Badders.  
Verdict. Filed January 30, 1915. Morton Albaugh, Clerk.

194 In the District Court of the United States for the District of  
Kansas.

No. 4160.

UNITED STATES  
vs.  
GEORGE S. BADDERS.

We, the jury in the above entitled cause, duly impaneled and sworn, upon our oaths, find the defendant guilty, as charged in the sixth count of the indictment herein.

W. K. HANNA, *Foreman*.

Endorsed: No. 4160. The United States vs. George S. Badders.  
Verdict. Filed January 30, 1915. Morton Albaugh, Clerk.

195 In the District Court of the United States for the District of  
Kansas.

No. 4160.

UNITED STATES  
vs.  
GEORGE S. BADDERS.

We, the jury in the above entitled cause, duly impaneled and sworn, upon our oaths, find the defendant guilty, as charged in the ninth count of the indictment herein.

W. K. HANNA, *Foreman*.

Endorsed: No. 4160. The United States vs. George S. Badders.  
Verdict. Filed January 30th, 1915, Morton Albaugh, Clerk.

196 In the District Court of the United States for the District of Kansas.

No. 4160.

UNITED STATES  
vs.  
GEORGE S. BADDERS.

We, the jury in the above entitled cause, duly impaneled and sworn, upon our oaths, find the defendant guilty, as charged in the eleventh count of the indictment herein.

W. K. HANNA, *Foreman*.

Endorsed: No. 4160. The United States vs. George S. Badders. Verdict. Filed January 30th, 1915. Morton Albaugh, Clerk.

197 In the District Court of the United States for the District of Kansas.

No. 4160.

THE UNITED STATES  
vs.  
GEORGE S. BADDERS.

We, the jury in the above entitled cause, by direction of the Court, find the defendant not guilty, as charged in the First, Seventh, Eighth, Tenth and Twelfth Count of the indictment herein.

W. K. HANNA, *Foreman*.

Endorsed: #4160. Verdict. Filed January 30, 1915. Morton Albaugh, Clerk.

198 In the District Court of the United States for the District of Kansas, First Division.

No. 4160.

UNITED STATES OF AMERICA, Plaintiff,  
v.  
GEORGE S. BADDERS, Defendant.

*Motion for a New Trial.*

And now comes the defendant and moves the court to set aside the verdicts of the jury on the second, third, fourth, fifth, sixth, ninth and eleventh counts of the indictment herein, and to grant him a new trial, for the following reasons to-wit:

## I.

Because the court erred in the admission of incompetent material and irrelevant testimony, which was objected to by defendant at the time.

## II.

Because said court erred in refusing to admit competent and material testimony offered by the defendant, whereby the defendant was prevented from showing facts in his defense which he was entitled to show.

## III.

Because said court erred in overruling defendant's petition for postponement of the trial and defendant's motion to continue cause.

## IV.

Because said court erroneously refused to give instructions to jury to which the defendant was entitled.

## V.

199 For other errors of law and irregularities in the proceedings, by which defendant was prevented from having a trial.

## VI.

Because the verdicts of the jury are not sustained by sufficient evidence.

## VII.

Because the verdicts on the third, fourth, fifth, sixth, ninth and eleventh counts of the indictment are not sustained by any evidence whatever that the defendant mailed any of the letters set out in said counts, within the jurisdiction of the court.

## VIII.

Because said verdicts and each of them are contrary to the law and to the evidence.

## IX.

Because said court erred in compelling the defendant to accept jurors selected and examined before defendant was arraigned and given an opportunity to plead.

Wherefore defendant prays the court to set aside all of said verdicts and grant the defendant a new trial.

JAMES H. HARKLESS,  
D. R. HITE,

*Attorneys for Defendant.*

Endorsed: No. 4160. In the District Court of the United States for the District of Kansas, First Division. United States of America, vs. George S. Badders, Defendant. Motion for a New Trial. Filed February 2, 1915. Morton Albaugh, Clerk.

200 In the District Court of the United States for the District of Kansas, First Division.

No. 4160.

UNITED STATES OF AMERICA, Plaintiff,  
vs.

GEORGE S. BADDERS, Defendant.

*Motion in Arrest of Judgment.*

### I.

Now again comes the defendant and moves the court in arrest of judgment on the verdict of the jury on the second count of the indictment; for that, the facts stated in said second count of the indictment do not constitute a public offense; that Section 215 of the Criminal Code under which said count is drawn, undertakes to punish the offense of defrauding or attempting to defraud by schemes or artifices to defraud, and by means of false and fraudulent promises and pretenses, and in such respects is not within the powers of Congress conferred by the Constitution of the United States; and if valid otherwise violates the provisions of said Constitution protecting the defendant against cruel and unusual punishments, and said section violates that provision of said Constitution that no person shall be deprived of his liberty without due process of law; and on the record defendant was placed twice in jeopardy by the court sustaining demurrers to counts 1, 7, 8, 10 and 12, and continuing the trial as to other counts.

### II.

The defendant further moves the court in arrest of judgment on the verdict of the jury on the third count of the indictment; for that, the facts stated in said third count of the indictment do not constitute a public offense; that Section 215 of the Criminal Code under which said count is drawn, undertakes to punish the offense of defrauding or attempting to defraud by schemes or artifices to defraud, and by means of false and fraudulent promises and pretenses, and in such respects is not within the powers of Congress conferred by the constitution of the United States, and if valid otherwise, violates that provision of said Constitution protecting the defendant against cruel and unusual punishments, and said section violates that provision of said Constitution that no person shall be deprived of his liberty without due process of law; and on the record the defendant was placed twice on jeopardy after demurrer was sustained to counts 1, 7, 8, 10 and 12.

## III.

The defendant further moves the court in arrest of judgment on the verdict of the jury on the fourth count of the indictment; for that, the facts stated in said count of the indictment do not constitute a public offense; that Section 215 of the Criminal Code under which said count is drawn, undertakes to punish the offense of defrauding or attempting to defraud by schemes or artifices to defraud, and by means of false and fraudulent promises and pretenses, and in such respects is not within the powers of Congress conferred by the Constitution of the United States; and if valid otherwise violates that provision of said Constitution protecting the defendant against cruel and unusual punishments, and said section violates that provision of said Constitution that no person shall be deprived of his liberty without due process of law, and on the record defendant has been placed twice in jeopardy by the court sustaining demurrers to counts 1, 7, 8, 10, and 12 and continuing trial as to other counts.

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## IV.

The defendant further moves the court in arrest of judgment on the verdict of the jury on the fifth count of the indictment; for that, the facts stated in said count of the indictment do not constitute a public offense; that Section 215 of the Criminal Code under which said count is drawn, undertakes to punish the offense of defrauding or attempting to defraud by schemes or artifices to defraud, and by means of false and fraudulent promises and pretenses, and in such respects is not within the powers of Congress conferred by the Constitution of the United States, and if valid otherwise, violates that provision of said Constitution protecting the defendant against cruel and unusual punishments, and said section violates that provision of said Constitution that no person shall be deprived of his liberty without due process of law, and defendant has been placed twice in jeopardy by the court sustaining demurrers to counts 1, 7, 8, 10, and 12 and continuing trial as to other counts.

## V.

The defendant further moves the court in arrest of judgment on the verdict of the jury on the sixth count of the indictment; for that, the facts stated in said count of the indictment do not constitute a public offense; that Section 215 of the Criminal Code under which said count is drawn, undertakes to punish the offense of defrauding or attempting to defraud by schemes or artifices to defraud, and by means of false and fraudulent promises and pretenses, and in such respects is not within the powers of Congress conferred by the Constitution of the United States; and if valid otherwise, violates that provision of said Constitution protecting the defendant against cruel and unusual punishments and said section violates that provision of said Constitution that no person shall be deprived of his liberty with-

203 out due process of law; and on the record defendant has been  
placed twice in jeopardy by the sustaining of demurrers to  
counts 1, 7, 8, 10 and 12 and continuing trial as to remaining  
counts.

## VI.

The defendant further moves the court in arrest of judgment on the verdict of the jury on the eighth count of the indictment; for that, the facts stated in said count of the indictment do not constitute a public offense; that Section 215 of the Criminal Code under which said count is drawn, undertakes to punish the offense of defrauding or attempting to defraud by schemes or artifices to defraud, and by means of false and fraudulent promises and pretenses, and in such respects is not within the powers of Congress conferred by the Constitution of the United States, and if valid otherwise, violates that provision of said Constitution protecting the defendant against cruel and unusual punishments, and said section violates that provision of said Constitution that no person shall be deprived of his liberty without due process of law, and on the record the defendant has been placed twice in jeopardy by the sustaining of demurrers to the 1, 7, 8, 10, and 12 counts and continuing trial as to others.

## VII.

The defendant further moves the court in arrest of judgment on the verdict of the jury on the ninth count of the indictment; for that, the facts stated in said count of the indictment do not constitute a public offense; that Section 215 of the Criminal Code under which said count is drawn, undertakes to punish the offense of defrauding or attempting to defraud by schemes or artifices to defraud, and by means of false and fraudulent promises and pretenses, and in such respects is not within the powers of Congress conferred by the Constitution of the United States; and if valid otherwise violates that provision of said Constitution protecting the defendant against cruel and unusual punishments, and said section violates that provision of said Constitution that no person shall be deprived of his liberty without due process of law, and on the record the defendant has been placed twice in jeopardy by the counts sustaining demurrers to counts 1, 7, 8, 10 and 12 and continuing the trial.

JAMES H. HARKLESS,  
D. R. HITE,

*Attorneys for Defendant.*

Endorsed: No. 4160. In the District Court of the United States the District of Kansas, First Division. United States of America, Plaintiff, vs. George S. Badders, Defendant. Motion in Arrest of Judgment. Filed Feb'y 2, 1915. Morton Albaugh, Clerk.

*Journal Entry of February 2, 1915.*

No. 4160.

THE UNITED STATES

vs.

GEORGE S. BADDERS.

Now on this 2nd day of February, 1915 being one of the days of the regular January term, 1915, come the parties hereto, the defendant George S. Badders being present in his own proper person and by D. R. Hite and James H. Harkless, his attorneys; the plaintiff, The United States being present by Fred Robertson, U. S. Attorney and Francis M. Brady, Ass't U. S. Attorney. Thereupon comes on for hearing defendant's motion for a new trial and the court having heard the arguments of counsel and being well advised in the premises finds that said motion should be, and the same is hereby overruled, to which ruling of the court defendant excepted.

Thereupon comes on for hearing defendant's motion in arrest of Judgment on the verdict of the jury on the second, third, fourth, fifth, sixth, ninth and eleventh counts of the indictment herein, and the court having heard the arguments of counsel and being well advised in the premises finds that said motion should be, and the same is hereby overruled, to which ruling of the court defendant excepted, and thereupon the defendant being inquired of by the court whether he had anything to say why the judgment of the court should not now be pronounced against him and the court having heard the statement of defendant in response thereto and being fully advised in the premises doth

Order and Adjudge, that the defendant, George S. Badders be imprisoned in the United States Penitentiary at Leavenworth, Kansas, for a period of five years on each of the second, third, fourth, fifth,

206 sixth, ninth and eleventh counts of the indictment herein, and that he make his fine unto the United States of America in the sum of \$1,000.00 on each of the second, third, fourth, fifth, sixth, ninth and eleventh counts of the indictment herein, and that said period of five years as to each of the said counts of said indictment shall run concurrently and not cumulatively, so that the imprisonment of the said George S. Badders in the Federal Penitentiary shall be for a period of five years and no more, and the total amount on account of said fines \$7,000.00, to which orders, rulings, and judgment of the court and to each and every part thereof the said George S. Badders duly excepted and excepts.



207 In the District Court of the United States for the District of  
Kansas, First Division.

No. 4160.

THE UNITED STATES OF AMERICA, Plaintiff,  
vs.

GEORGE S. BADDERS, Defendant.

*Order.*

Whereas, it appearing to the court, that one H. Kamber, of New York City, was duly and regularly subpoenaed as a witness in behalf of the Government in the above entitled case, to appear at Leavenworth, Kansas, on October 12th, 1914, and whereas, before the arrival of said H. Kamber at Leavenworth, Kansas, and while en route to appear as said witness, said case was continued, and said witness, H. Kamber, was stopped by telegraph at the city of Indianapolis, and notified of said continuance, and he thereupon returned from Indianapolis to the City of New York, having traveled from the City of New York to the City of Indianapolis, Indiana, in obedience to the order contained in said subpoena, the distance of 825 miles, and 825 miles in returning therefrom to his home. The Court being fully advised in these premises and on motion of U. S. Attorney orders that said witness, H. Kamber, be allowed his mileage in obedience to said subpoena from the City of New York, New York, to the City of Indianapolis, Indiana, and return, in the sum of \$82.50.

Made and executed this 2nd day of February, 1915.

DAVID P. DYER,

*Judge U. S. District Court for the District of Kansas.*

208 Endorsed: #4160. Order to pay H. Kamber, a Witness.  
Filed February 2nd, 1915. Morton Albaugh, Clerk.

209 In the District Court of the United States for the District of  
Kansas, First Division.

No. 4160.

THE UNITED STATES OF AMERICA, Plaintiff,  
vs.

GEORGE S. BADDERS, Defendant.

*Petition for Writ of Error.*

The defendant George S. Badders, feeling himself aggrieved by the proceedings and judgment of this court entered on February 2nd, 1915, respectfully prays the allowance of a writ of error return-

able to the Supreme Court of the United States to the end that error, if any there be, in said proceedings and judgment, may be corrected.

And said defendant further prays that this court allow a supersedeas from said judgment upon the defendant giving the undertaking required by law in such cases.

JAMES H. HARKLESS,

D. R. HITE,

*Attorneys for Defendant.*

Writ of error allowed this February 3rd, 1915, and amount of bond to act as supersedeas fixed at the sum of Ten Thousand (10,000) Dollars.

DAVID P. DYER, *Judge.*

210      Endorsed: No. 4160. In the District Court of the United States for the District of Kansas, First Division. United States of America, Plaintiff, vs. George S. Badders, Defendant. Petition for Writ of Error, and Order Allowing Same and Fixing Bond. Filed February 3, 1915, Morton Albaugh, Clerk.

211      In the District Court of the United States for the District of Kansas, First Division.

No. 4160.

THE UNITED STATES OF AMERICA, Plaintiff,

vs.

GEORGE S. BADDERS, Defendant.

*Defendant's Assignment of Errors.*

The defendant presents with his petition for a writ of error returnable to the United States Supreme Court, the following assignment of errors, upon which he will rely to maintain said writ, to-wit:

1.

That the above entitled court erred in overruling defendant's general demurrers to each of the counts of the indictment herein; defendant complaining by this assignment of the adverse ruling on each of said demurrers, and referring to the same as filed herein on October 11, 1914; for that said indictment fails, as to each count, to state facts sufficient to constitute an offense cognizable by this court under the Constitution of the United States; and neither of the counts in said indictment states sufficient facts to show that defendant has committed an offense against the laws of the United States.

2.

Said Court erred in overruling defendant's special demurrer to the indictment herein, and the several counts therein; for that, said

212 court should have sustained said demurrer as in none of said counts has plaintiff set forth the name of the person, or the nature of the means by which it is alleged defendant caused to be deposited in the post office at Topeka, Kansas, either of the letters set out in said indictment.

## 3.

Said court erred in failing to compel the plaintiff to elect whether it would attempt to show that defendant deposited said letters or to show that he caused them to be deposited in said post office.

## 4.

Said court (erred) in overruling defendant's motion to quash said indictment when it appeared that the pretended grand jury assembled as stated in said motion, heard evidence, deliberated and pretended to vote on said indictment during a time when no judge of said court was present in the district of Kansas, all as alleged in paragraph two of defendant's motion to quash said indictment filed herein on October 11, 1914.

## 5.

Said court erred in overruling defendant's motion to quash said indictment when it appeared that the pretended grand jurors had not been sworn as required by law.

## 6.

Said court erred in overruling defendant's motion to quash the indictment herein when it appeared that said indictment had not been returned into open court by a grand jury as required by law.

## 7.

213 Said court erred in overruling defendant's motion to quash said indictment for that the same is ambiguous and uncertain; and erred in holding that said indictment was not duplicitous.

## 8.

That said court erred in overruling defendant's motion to quash said indictment on the ground that said indictment does not advise the defendant of the transgression with which he is charged with sufficient clearness or precision to enable him to determine which of several distinct offenses the plaintiff claims he committed.

## 9.

Said court erred in refusing to quash said indictment when it appeared that defendant had had no preliminary examination as to the alleged offenses set out in said indictment, but had been arrested, waived his preliminary examination and was under bail to answer

for a different alleged violation of the section of the Criminal Code under which said indictment is claimed to have been returned.

**10.**

Said court erred in holding that the proceedings herein against the defendant were lawful when it appears that the same were not in conformity with the laws of Kansas.

**11.**

Said Court erred in holding that Section 215 of the Criminal Code authorizes the joinder of more than one offense of mailing each letter mentioned in the indictment to execute the one scheme; and in holding that said indictment did not constitute an attempted splitting up of a single pretended offense.

**12.**

Said Court erred in sustaining the indictment herein as against defendant's demurrers and motions to quash; for that, said  
214 indictment attempts to charge the defendant with an offense or offenses under Section 215 of the Criminal Code, consisting in the alleged use of the United States mails as a means of defrauding persons of property, when it appears from said indictment, that the said means consisted of letters harmless in themselves, and the offense, if any, was in defrauding such persons, and the Congress of the United States is without constitutional power to punish citizens for defrauding other citizens of their property; and the Congress has no power to make criminal the mere means by which such fraud, if any may be accomplished, or attempted; and said Section in so far as it deals with the defrauding or attempting, or designing to defraud persons of their property, or money, and attempts to punish the same, is wholly unconstitutional and void, and said court should have held and determined that it had no jurisdiction to proceed against this defendant under or by virtue of said Section.

**13.**

That said court erred in holding and deciding that it is an offense cognizable by the courts of the United States for the defendant to use the post office establishment of the United States to fraudulently deprive the persons named in the indictment of property in the manner alleged in said indictment; for that, such use of the mails cannot be made an offense by act of Congress pursuant to any power conferred by the Constitution of the United States.

**14.**

Said court erred in sustaining said indictment; for that, said section 215, under which said indictment was drawn violates that provision of the Constitution of the United States protecting citizens against cruel and unusual punishments.

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## 15.

Said court erred in refusing to compel the plaintiff to furnish defendant with a bill of particulars as requested in defendant's motion therefor; for that, it appears that without such bill of particulars defendant could not prepare to meet the charges contained in the several counts of said indictment.

## 16.

Said court erred in overruling defendant's petition to postpone the time of trial of this action, which motion was duly filed herein on January 9, 1915.

## 17.

Said court erred in overruling the defendant's motion for a continuance of this cause filed herein on January 25, 1915; for that, it appears that an order of this court was made on January 20, 1915, directing George A. Clark to produce at Kansas City, Kansas, where said case was proceeding, certain papers mentioned and referred to in said motion, theretofore in his possession, as a Receiver, which papers had disappeared, and could not be produced, and were not accessible to defendant and were urgently needed by him in the preparation of his defense, and defendant in the circumstances stated in said motion was entitled to a reasonable time to procure and produce secondary evidence of the contents of the same, denying said motion was an abuse of the court's discretion.

## 18.

Said court erred in proceeding with the selection of jurors before defendant was arraigned, and erred in overruling defendant's objection to all proceedings in connection with the empaneling of jurors prior to his arraignment and the entering of a plea; for that said defendant was arraigned in the presence of jurors, and after certain jurors had been selected, who afterward were sworn to try this action.

## 19.

Said court erred in overruling the defendant's objection to the introduction in evidence of certain letters purporting to bear defendant's signature, the objection being that the plaintiff had permitted defendant to take copies of all documents which plaintiff proposed to introduce and the letters offered were not among the number so copied; whereupon the court announced that he knew of no rule requiring the government to confine itself in such manner. Defendant in this connection offered to prove that he had received no copies of such letters, but the court denied the offer and admitted the letters. At this time no bill of exceptions has been prepared and such letters cannot be here copied.

## 20.

The said court erred in admitting Exhibits 9 to 27 in evidence over defendant's objection that the signatures of the defendant had not been proved.

## 21.

The said court erred in admitting the testimony of the witness Mrs. Burdick as to the contents of certain cash slips not in evidence, over defendant's objection that such evidence was secondary and incompetent.

## 21½.

Said court erred in admitting in evidence the testimony of the witness Coulson reading from pages of the ledger of The Badders Clothing Company entries relative to the so-called expense account, the so-called salary account, commission and other accounts, over the defendant's objection that such testimony was incompetent, secondary and hearsay, and not shown ever to have been made or seen by the defendant.

## 22.

Said court erred in admitting in evidence a certain so-called list of creditors Exhibit 40, prepared by the witness Coulson over defendant's objection that the same was incompetent, secondary and hearsay, and not binding on the defendant.

## 23.

Said court erred in admitting in evidence a so-called ledger of the Badders Clothing Company, over the defendant's objection that it was shown that said ledger was not correct; that the witness through whom it was offered had no knowledge of the correctness of the entries as correctly recording the entries thereon; that original sources of such entries, such as charge and cash slips, and the like, were unaccounted for; that such evidence was incompetent, hearsay, and not binding upon the defendant.

## 24.

Said Court erred in admitting in evidence copies of so-called bills of lading being Exhibits 42 and 43, over defendant's objection that that the same were incompetent and secondary.

## 25.

Said court erred in admitting in evidence a letter of S. R. Graham to Alfred Decker identified by the witness Spiesberger, and dated December 24, 1913, over defendant's objection that the same was incompetent and hearsay, and not binding on defendant; said letter was marked Ex. 51.

## 26.

Said court erred in refusing to admit in evidence carbon copies of letter addressed by the defendant to the witness Guggenheim and a letter (Ex. 62) from the witness Guggenheim answering such letters, carbon copies of which were shown witness; for that, said copies and said letter from the witness were sufficiently identified and were material to defendant's cross-examination of the witness.

## 27.

Said court erred in refusing to permit defendant on cross examination, to fully interrogate the witness Spiesberger relative to his interest in the prosecution of the defendant and his contribution to a fund to which the witness contributed for such purpose, and to permit defendant to put in evidence and read to the jury from a bulletin of the Credit Men's Association of which witness was a member and which the witness recalled having seen; and said court erred in refusing to examine such pamphlet or Bulletin; for that, defendant's counsel was cross-examining the witness and claimed the right to show by such interrogation and bulletin the interest, bias and prejudice of a material witness for the plaintiff.

## 28.

Said court erred in admitting in evidence a so-called transcript stated by the witness Cobb to be taken from the books of The Bank of Topeka, and alleged to show the transactions of The Badders Clothing Company with that bank, over the objection of defendant that the same was incompetent and hearsay upon hearsay for that the witness did not make the entries, knew of them only as he saw them on the bank's books, which were not produced and witness knew nothing of the transactions to which the bank's books and transcript related. Said transcript appears as Exhibit —.

## 29.

219 Said court erred in admitting in evidence Ex. 72 purporting to be the original of the letter referred to in Count 2 of the indictment, over defendant's objection that the signature of the defendant was not properly identified; that plaintiff's evidence wholly failed to show that such letter had been mailed by the defendant; that plaintiff's evidence wholly failed to show that said letter was mailed for the purpose of executing any scheme or artifice for obtaining property of the persons named in the indictment, and was wholly incompetent and immaterial.

## 30.

Said court erred in admitting in evidence Ex. 89 alleged to be the envelope set out in count 2 of the indictment over defendant's objection that it was not alleged or shown that the address on the same had been written by the defendant or by his authority or otherwise



identified; that the letter alleged to have been enclosed was not addressed to the person whose name appeared on the envelope and the same was wholly incompetent.

## 31.

Said court erred in admitting in evidence the alleged original of the letter set out in count 3 of the indictment, over defendant's objections, that it was not sufficiently identified; that it showed an erasure or alteration not referred to in the indictment, and was a variance therefrom; that it was not shown to have been mailed by the defendant; that it was not shown to have been mailed for the purpose of executing the alleged scheme or artifice; that it was not alleged that it was received in an envelope used by the defendant or by his authority and such facts were not proven.

## 32.

220 Said court erred in admitting in evidence the purported original of the letter set out in the third count of the indictment, being Ex. 73, over the objection of the defendant that the signature to said letter was not sufficiently identified; that said purported original letter showed an alteration and erasure upon its face not accounted for by the evidence or the indictment; that it had not been shown that said letter was mailed or caused to be mailed by the defendant, and that the same was incompetent, irrelevant and immaterial. And also because it was not shown that said letter had been transmitted through the mails, and the alleged envelope mentioned in the indictment was not produced, although the facts of the loss of such envelope was known to the grand jury and such loss was not alleged in the indictment.

## 33.

Said court erred in admitting in evidence the purported original of the letter set out in the fourth count of the indictment, marked Ex. 74, over the objections of the defendant on the grounds set out in Assignment of Error No. 31, for that, said letter was not sufficiently identified and was for the reasons stated wholly incompetent and immaterial.

## 34.

Said court erred in admitting in evidence the purported original of the letter set out in the fifth count of the indictment, over the objections of the defendant, that said letter was not sufficiently identified; that there was no sufficient proof that it had been mailed by the defendant; that there was no proof that the defendant wrote or had knowledge of the typewritten matter appearing under the defendant's alleged signature, or that he knew of the addition so appearing; and also for the reason stated in defendant's objection set out under Assignment of Error No. 31.



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35.

Said court erred in admitting in evidence the purported original of the letter set out in the sixth count of the indictment, over the objections of the defendant, that erasures and alterations appeared on the face of said letter, unaccounted for in the indictment or the evidence; that it was not shown that said letter was written by the defendant; that it was not shown that such letter was mailed or caused to be mailed by the defendant; that it was not shown that the letter was mailed for the purpose of executing the alleged scheme or artifice set out in the first count of the indictment, and that said purported original letter was wholly incompetent and immaterial. And also for the further reason that it was not shown that the defendant wrote or caused to be written or authorized the matter appearing on said purported original after the alleged signature.

36.

Said court erred in admitting in evidence the purported original of the letter set out in the ninth count of the indictment, over the objections of the defendant, that the signature of the defendant to said letter was not proven; that from the evidence of the witness Griffith, it appeared that said letter, if mailed by the defendant, was mailed after the completion of the alleged scheme or artifice and was not mailed for the purpose of executing the said scheme; that it was not shown that defendant mailed said letter or caused the same to be mailed, and the alleged envelope mentioned in the indictment as enclosing said letter was not produced; that the grand jury knew of the loss of said envelope and that said letter was wholly incompetent and did not tend to establish any of the issues.

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37.

Said court erred in admitting in evidence the purported original of the letter set out in the eleventh count of the indictment over the objections of the defendant, that there was no evidence that the letter was written or signed by the defendant; that it was not proven that such letter has been mailed; that the testimony of the witness relative to receiving it through the mail was wholly insufficient, it appearing that the witness had no independent recollection of ever having received such letter through the mails; that there was no evidence that such letter had been mailed by the defendant or by anyone for him; that it was not proven that said letter was written for the purpose of executing the alleged scheme or artifice set out in the indictment; that it not appearing from the indictment that the alleged envelope enclosing said letter was lost, said letter was inadmissible without the envelope referred to, and that said letter and evidence in connection therewith was wholly incompetent and immaterial and not within the issues.

38.

Said court erred in refusing to permit the defendant to interrogate the witness by whom the plaintiff attempted to prove the receipt of the letters set out in the second, third, fourth, sixth, ninth, and twelfth, counts of the indictment as to their testimony or the testimony of anyone of them before the grand jury, relative to the alleged envelopes enclosing said letters, said questions being asked for the purpose of showing that the absence or loss of said envelopes, if any there was, were known to the grand jury when said pretended indictment was filed and such loss was not alleged therein.

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Said court erred in refusing to permit the defendant to interrogate witnesses fully with reference to a sale of the Badders Clothing Company in the fall of 1911, which testimony was offered for the purpose of showing that under similar circumstances to those mentioned in the indictment and evidence, the defendant after a sale had paid all of the debts of said clothing company; for that, said offer of proof was competent, within the issues and tended to show that the defendant had no intention of defrauding as alleged in the indictment herein.

40.

Said court erred in admitting in evidence a letter referred to by the witness Helen Cohen, as having been received through the mails, for the reason that said witness testified in substance, that she had no independent remembrance of receiving the letter in question through the mails, and had no independent remembrance of it being contained in an envelope, or that if contained in an envelope, the same was addressed as alleged in the indictment, or stamped with a United States postage stamp as alleged; for that, said testimony was wholly incompetent, irrelevant and immaterial, having no probative value whatever.

41.

Said court erred in refusing defendant's offer of proof by the witness Wallace of details within his personal knowledge in reference to said sale in the fall of 1911, the manner in which it was conducted, the condition of The Badders Clothing Company at that time, and the like; for that, said offer of proof, if admitted, would have shown the honest intent of the defendant in respect of a similar transaction alleged in the indictment to have occurred in December, 1913.

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42.

Said court erred in refusing at the close of all of the testimony to instruct the jury to return a verdict for the defendant on the second count of the indictment; for that, the plaintiff's evidence was

insufficient to establish the guilt of the defendant as to the alleged offense charged in said count.

43.

Said court erred in refusing at the close of all of the testimony to instruct the jury to return a verdict for the defendant on the third count of the indictment; for that, the plaintiff's evidence was insufficient to establish the alleged offense charged in said count.

44.

Said court erred in refusing at the close of all of the testimony to instruct the jury to return a verdict for the defendant on the fourth count of the indictment; for that, the plaintiff's evidence was insufficient to establish the alleged offense charged in said count.

45.

Said court erred in refusing at the close of all of the testimony to instruct the jury to return a verdict for the defendant on the fifth count of the indictment; for that, the plaintiff's evidence was insufficient to establish the alleged offense as charged in said count.

46.

225 Said court erred in refusing at the close of all of the testimony to instruct the jury to return a verdict for the defendant on the sixth count of the indictment; for that, the plaintiff's evidence was insufficient to establish the alleged offense as charged in said count.

47.

Said court erred in refusing at the close of all of the testimony to instruct the jury to return a verdict for the defendant on the ninth count of the indictment; for that, the plaintiff's evidence was insufficient to establish the alleged offense as charged in said count.

48.

Said court erred in refusing at the close of all of the testimony to instruct the jury to return a verdict for the defendant on the eleventh count of the indictment; for that, the plaintiff's evidence was insufficient to establish the alleged offense as charged in said count.

49.

Said court erred in overruling and denying the motion of the defendant filed herein at the close of the testimony to direct the jury to return a verdict of not guilty on the second, third, fourth, fifth, sixth, ninth, and eleventh counts of said indictment; for that, at the close of the plaintiff's evidence the court sustained a demurrer to the plaintiff's evidence as to the first, seventh, eighth, tenth and twelfth counts of said indictment, and such ruling and judgment of

the court concluded the plaintiff as to the remaining counts of the indictment.

50.

Said court erred in refusing to instruct the jury to return a verdict of not guilty as to all of the counts in the indictment; for that, Section 215 of the Criminal Code under which said indictment is drawn, violates the constitutional right of the defendant that he shall not be deprived of his liberty without due process of law, such statute is not within the powers conferred upon Congress by said Constitution, and violates that provision of the said constitution protecting the defendant against cruel and unusual punishments.

51.

Said court erred in overruling defendant's motion for a verdict of not guilty as to said second count, for that, the plaintiff failed to show that the letter referred to in the second count had been deposited, or caused to be deposited in the mail by the defendant, within the jurisdiction of the court.

52.

Said court erred in overruling the defendant's motion for a verdict of not guilty as to said third count for that, the plaintiff failed to show that the letter referred to in the third count had been deposited or caused to be deposited in the mail by the defendant, within the jurisdiction of the court.

53.

Said court erred in overruling defendant's motion for a verdict of not guilty as to the said fourth count, for that, the plaintiff failed to show that the letter referred to in the fourth count had been deposited or caused to be deposited in the mail by the defendant, within the jurisdiction of the court.

54.

Said court erred in overruling defendant's motion for a verdict of not guilty as to the fifth count, for that, the plaintiff failed to show that the letter referred to in the fifth count had been deposited or caused to be deposited in the mail by the defendant, within the jurisdiction of the court.

55.

Said court erred in overruling defendant's motion for a verdict of not guilty as to the Sixth Count, for that, the plaintiff failed to show that the letter referred to in the sixth count had been deposited or caused to be deposited in the mail by the defendant, within the jurisdiction of the court.

56.

Said court erred in overruling defendant's motion for a verdict of not guilty as to the ninth count, for that, the plaintiff failed to show that the letter referred to in the ninth count had been deposited, or caused to be deposited in the mail by the defendant, within the jurisdiction of the court.

57.

Said court erred in overruling defendant's motion for a verdict of not guilty as to the twelfth count, for that, the plaintiff failed to show that the letter referred to in the twelfth count had been deposited or caused to be deposited in the mail by the defendant, within the jurisdiction of the court.

58.

Said court erred in overruling defendant's motion in arrest of judgment; for that, the indictment herein does not state facts sufficient to establish that the defendant had committed a public offense.

59.

228 Said court erred in overruling defendant's motion in arrest of judgment as to count two of the indictment; for that, it appears from the face of said count two that the letter alleged to have been mailed or caused to be mailed by the defendant is the same letter as that set out in the first count, and it is not alleged that the defendant enclosed said letter in the envelope mentioned in the 2nd count, nor is it alleged when said letter was enclosed in such envelope.

60.

Said court erred in overruling defendant's motion in arrest as to count two, for it is not shown on the face of said indictment that the letter therein set out was mailed for the purpose of executing the alleged scheme or artifice and it does appear from the first count of said indictment that said letter was mailed to another person.

60A.

Said court erred in refusing to charge the jury as follows: "The court charges and instructs the jury that the defendant in this case is not on trial for the failure, neglect, or refusal to pay any of his debts, nor for having given checks of any kind or character upon banks, or to creditors, that have not been paid; nor for any breach of promise or inability to pay debts at any time; nor upon any charge of failing to pay up any capital stock that he may have subscribed to the Badders Clothing Company; nor upon any charge

of selling any of his property or goods at any price, or for any purpose, and that as far as this case is concerned those questions are wholly immaterial except in so far and only as such matters may bear, or have a bearing upon the charge in the indictment that the defendant had devised a scheme and artifice to defraud his creditors at the time charged in the indictment; and that the inquiry into these matters become necessary only as bearing solely and only upon such intent, and are not to be considered or weighed by the jury for any other purpose" as requested by defendant.

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60B.

Said court erred in refusing to charge the jury as follows: "In reference to the \$25,000 note offered in evidence the court instructs and charges the jury that if said note was given by George S. Badders, to the Badders Clothing Company in payment of an increase in the capital stock of said corporation to the extent of \$25,000, and you believe from the evidence that said note was given in good faith by the defendant Badders for that purpose, and that said Badders at the time he executed said note was solvent, and said note a marketable asset, then you are instructed that said increased capital stock was paid up and constituted a capital asset of said corporation and was a sufficient payment to its capital stock so increased," as requested by defendant.

60C.

Said court erred in refusing to charge the jury as follows: "The court charges and instructs the jury that if they find from the evidence that the money taken by the defendant Badders from the sale and disposition of his stock of goods, was by said Badders paid out, or caused to be paid out to his creditors, or in payment of other bona fide indebtedness and expenditures in good faith, and with the intent on the part of said Badders to apply the same in good faith to the liquidation of his debts and bona fide expenses incurred, then you are instructed that no presumption can arise therefrom, or because of such acts and conduct of the defendant, that he intended to, or had devised a scheme or artifice to defraud, as charged in the indictment, and if he did so pay out the same in good faith, then you may take such facts into consideration also in passing upon the question as to whether he intended at the times charged in the indictment, to devise a scheme or artifice to defraud his creditors as therein charged," as requested by defendant.

230

60D.

Said court erred in refusing to charge the jury as follows: "The Court instructs and charges the jury that even though they may find that the defendant may have taken a number of boxes of goods from the store in the month of December and shipped the same out of the city of Topeka and stored the same elsewhere, and that all of said goods were returned afterwards to the store and replaced therein, and constituted a part of the stock turned over to

the receiver, then you are instructed that so far as the creditors are concerned the defendant had the right to do so, and that the same constituted no offense in itself, and that the defendant cannot be found guilty of any crime or offense in said transaction of itself, and that such intent was competent in the case only and solely as bearing upon the question as to whether the defendant intended to, and devised a scheme or artifice to defraud his creditors as and at the time charged in the indictment; and in passing upon this question the jury may take into consideration the evidence tending to show that the defendant did so return the goods, and that he charged the value thereof to his own personal account upon the books of the corporation at the time they were taken out.

## 60E.

Said court erred in refusing to charge the jury as follows: "The Court charges and instructs the jury that it was no crime or offense so far as this case is concerned, as to whether the corporation itself, or the corporation at the instance of the defendant, declared the dividend shown in the evidence, or that the defendant was instrumental in causing the dividend to be declared; nor as to how or in what manner it was declared, but that such facts become material only and solely in passing upon the question as to whether  
231 the defendant had devised a scheme and artifice to defraud his creditors at the time as charged in the indictment," as requested by defendant.

## 60F.

Said Court erred in refusing to charge the jury as follows: "The court charges and instructs the jury that there is no evidence in this case from which the jury are justified in finding that any dividend was ever paid or received by the defendant Badders, or that any commissions upon the sale of capital stock, or upon the sale of merchandise in excess of \$50,000, was ever paid to or received by the defendant," as requested by defendant.

## 60G.

Said court (erred) in refusing to charge the jury as follows: "The court instructs the jury that any and all evidence in the cause, showing, or tending to show that a dividend was declared upon the capital stock of the corporation, or commissions were agreed to be paid for the sale of goods or capital stock, or that increased salaries were agreed to be paid by the corporation to its officers, and to the defendant was not to be admitted in evidence for the purpose of showing, nor is the same to be considered by the jury as any crime or violation of law in this cause, but was admitted solely and only that the same might be considered by the jury as bearing upon the question as to whether the defendant had devised a scheme or artifice to defraud his creditors as and at the time charged in the indictment, and they cannot be considered by the jury for any other purpose," as requested by defendant.



## 60H.

232 Said court erred in refusing to charge the jury as follows: "The Court instructs and charges the jury that the evidence tending to show that the defendant purchased some municipal bonds, and afterwards disposed of the bonds and received cash, either partly in currency or partly in gold, from the Trust Company, constituted no crime or offense against the law on the part of the defendant, and so far as the creditors are concerned, or affected this case, he had a right to do so, and that such evidence was admitted solely and only for the consideration of the jury in passing upon the question as to whether the defendant devised a scheme or artifice to defraud his creditors as and at the time charged in the indictment," as requested by defendant.

## 60I.

Said court erred in refusing to charge the jury as follows: "The Court instructs and charges the jury that it is a matter of no importance in this case as to whether the defendant paid some of his creditors and left others unpaid, or as to whether he preferred one or more creditors as against others, and that if such creditors as he did pay were paid in good faith and for the purpose of discharging their indebtedness, and any and all evidence with reference to the payment of any or more of the creditors, or the refusal to pay any one or more of the creditors, and all evidence as to the acts or conduct of the defendant in reference to the same were admitted in evidence solely and only for the consideration of the jury as bearing upon the question as to whether the defendant intended to, or devised a scheme or artifice to defraud his creditors, as and at the time charged in the indictment," as requested by defendant.

## 60J.

233 Said court erred in refusing defendant's request to charge the jury as follows: "The Court instructs and charges the jury that in passing upon the question in this case as to whether the defendant devised a scheme or artifice for the purpose of defrauding his creditors, as charged in the indictment, the jury are instructed that if from all of the evidence in the case it shall appear to them that the acts and conduct of the defendant were as consistent with honesty and good faith as with the purpose and intention to defraud, as charged in the indictment, then the jury are instructed that the defendant is not guilty, and they should return a verdict in his favor."

## 60K.

Said court erred in refusing defendant's request to charge the jury as follows: "The Court instructs the jury with reference to the charge that the defendant mailed the letters set out in the indictment, that if they find from the evidence that the same were mailed under pressing circumstances and financial embarrassment confronting him at the time, for the purpose, and with the intent to secure extension of



time, or additional goods, in good faith, for his sacrifice sale, and with the expectation and intent that he could and would be able to meet his liabilities incurred, and were not mailed with an intent on his part in furtherance of any scheme or artifice to defraud his creditors, or to aid in doing so, then you are instructed that the defendant is not guilty in this case."

## 60L.

The court erred in refusing defendant's request to charge the jury as follows: "The court charges and instructs the jury that no charge of a scheme or artifice to defraud a creditor can be sustained against the defendant as to any creditor who may have shipped and billed his goods to the corporation prior to the time of the mailing of the letters mentioned in the indictment to such creditor.

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## 60M.

Said court erred in refusing defendant's request to charge the jury as follows: "The Court instructs the jury that if they have a reasonable doubt as to the guilt of the defendant, then they must return a verdict for the defendant, and in this connection the jury are instructed that each individual juror must be convinced beyond a reasonable doubt of the guilt of the defendant before they should return a verdict of guilty.

## 60N.

Said court erred in refusing defendant's request to charge the jury as follows: "The Court instructs and charges the jury that on January 22, 1914 the defendant was served with an injunction prohibiting him from disposing of any of the money or property of the Badders Clothing Company, and from the date of the service of that injunction upon the defendant he was prohibited from paying any such debts, and no inference against the defendant can be drawn from the fact that none of the debts of said Clothing Company were paid or attempted to be paid after that time, or that he refused to pay any creditors of the Clothing Company who demanded payment of their claims, after that date.

## 60O.

The court erred in refusing defendant's request to charge the jury as follows: "The Court instructs the jury that if you find from the evidence that in the months of December 1913 and January 1914, the Badders Clothing Company was in fact insolvent, and was being pressed by its creditors for payment of their claims, then you are instructed that it could not make payment through its President, or otherwise, of any one or more of said claims, or allow an attachment to stand without being released, for a period of five days, except at the risk of being adjudged a bankrupt.

235

## 60P.

The court erred in refusing defendant's request to charge the jury as follows: "The Court instructs the jury that if you find from the evidence that the immediate cause of the failure of the defendant to pay, or cause to be paid, the debts of the Badders Clothing Company arising from the purchase of the goods referred to in the indictment was the conditions confronting him at the time demands for payment for such goods were made upon him, and that except for such conditions he would have paid for such goods, then your verdict must be for the defendant.

## 60Q.

The court erred in refusing defendant's request to charge the jury "The Court instructs the jury that the indictment in this action charges the defendant with having devised a scheme or artifice to defraud the several persons, partnerships and corporations named in the indictment, and other persons, to the grand jurors unknown, of goods, wares, merchandise and property of value, by means of false and fraudulent pretenses and promises, and you are therefore instructed that evidence tending to show that the defendant converted money of the Badders Clothing Company to his own use does not sustain this charge.

## 60R.

The court erred in refusing defendant's request to charge the jury as follows: "The Court instructs the jury that the stock or goods in question was the property of the Badders Clothing Company, and not of the creditors, and the Badders Clothing Company had the right to sell the same, or any portion of the same, for any price that they saw fit, or to otherwise dispose of the same as they saw fit, and the creditors have no right to interfere therewith, so far as this case is concerned, and any and all evidence introduced with reference to that subject was admitted solely and only for the purpose of bearing upon the question as to whether the defendant devised a scheme or plan to defraud his creditors as and at the time stated in the indictment.

## 60S.

The court erred in refusing defendant's request to charge the jury as follows: "The Court instructs the jury that as to any sales of merchandise made to Voiland, to Mills or to August, that the defendant had the right to sell said goods to said parties when he did sell them, and to sell them for such price as he saw fit, and that the evidence concerning those matters was admitted only for the purpose, and as bearing upon the question as to whether the defendant devised a plan or artifice to defraud his creditors as and at the time stated in the indictment, and in this connection you are further instructed that if said goods were sold at a reasonable price under the conditions existing at the time, having regard to the character of the goods, then you are instructed that no presumption of improper intent can arise therefrom as against the defendant."

## 60T.

The court erred in refusing defendant's request to charge the jury as follows: "The Court instructs the jury that if you find from the evidence that the Badders Clothing Company, after the completion of the sale, was in good faith intending to continue in business, and had made arrangements for new quarters, and cutting down the space in their old quarters, and ordering fixtures and arranging for the continuance of business, then you are instructed that you must take such facts into consideration in passing upon the question as to whether or not the defendant had any intent to defraud creditors as and at the time charged in the indictment.

## 60U.

The court erred in refusing the defendant's request to charge the jury: "The Court instructs the jury that any transactions, or conduct by the defendant Badders as between himself and the Badders Clothing Company, or the handling of its cash funds, or goods, in the manner shown by the evidence, is a matter of no importance to the Badders Clothing Company, and the question as between the Clothing Company and Badders is not at issue in this case, and he cannot be convicted for any transactions had between himself and the Company, or for any alleged breach of duty between himself and the Badders Clothing Company, and any and all transactions between himself and the Badders Clothing Company were admitted in evidence only and solely as bearing upon the question as — whether the defendant intended to defraud the creditors at the time, and as charged in the indictment and is to be considered by them solely and alone as bearing upon that question.

## 60V.

The court erred in refusing defendant's request to charge the jury as follows: "The Court instructs the jury that it appears in evidence that in 1911 a previous bankrupt sale was conducted by Badders Clothing Company in the same building at Topeka, Kansas. You are instructed, therefore, that if you find at said sale that Badders had informed his creditors thereof, and that the same was freely advertised as a sacrifice sale in the newspapers, and resulted in a sale of goods so that the Badders Clothing Company was enabled, as a result thereof, to pay up all of its debts and continue in business thereafter, and that said sale was conducted in a similar manner to the sacrifice sale in question, made in December 1913, and that the sale in December 1913 was put on and conducted under similar circumstances and conditions as to that of 1911, then you may take such facts into consideration in passing upon the question as to whether the defendant had devised any scheme or artifice as and at the time charged in the indictment, to defraud his creditors, as charged in the indictment.

## 60W.

The court erred in refusing the defendant's request to charge the jury as follows: "The Court charges and instructs the jury that even though they may find that the defendant did all of the things and performed all of the acts charged in the indictment against him in the manner and form as charged therein, yet they are instructed that said acts and transactions do not of themselves prove that the defendant had the intention to form a scheme or artifice to defraud his creditors, as charged in the indictment, and notwithstanding you find all of said facts to be true, yet defendant cannot be convicted unless you find that he had an intent as charged in the indictment to defraud his creditors, and that the doing or performing of all or any of the acts charged in the indictment constituted no crime on the part of the defendant unless the jury further believe that it was the original intent of defendant at the time and in the manner charged in the indictment to defraud his creditors and persons, as therein charged."

## 60X.

The court erred in refusing defendant's request to charge the jury as follows: "The Court charges and instructs the jury that in considering the question as to what became of the funds taken in by the Company at the sale, they may take into consideration the amount shown from the evidence to have been necessarily expended by the  
239 defendant in defending the corporation in the bankruptcy proceeding, as well also as the expenses incident to the sale, and any and all amounts that the corporation may have paid out to creditors, or paid in liquidation and satisfaction of debts for which the corporation might be liable."

## 61.

Said court erred in overruling defendant's motion in arrest of judgment as to the second, third, fourth, fifth, sixth, ninth and eleventh counts of the indictment; for that, it appears from the record that the plaintiff failed as to the first count of the indictment in other respects than as to the mailing of the alleged letter, and there being a failure of proof relative to the scheme or artifice as charged in the first count of said indictment, and the court having sustained a demurrer as to said first count, the plaintiff was concluded by the judgment of this court sustaining said demurrer as to the first count, from asserting the guilt of the defendant as to the other counts, and, upon the record a judgment based upon all the verdicts of the jury should be entered in favor of the defendant; and he be discharged.

## 62.

Said court erred in entering judgment as it did upon the verdicts of the jury; for that, it appears from the face of the record that the defendant has committed no offense cognizable under any law enacted by Congress within its Constitutional powers; for that, Section 215

of the Criminal Code in so far as it attempts to inflict punishment upon a citizen for defrauding another, or attempting to do so, is wholly unconstitutional and void, and said section, if constitutional, violates that provision of the Federal Constitution protecting the defendant against cruel and unusual punishment; that said Section violates that provision of the Federal Constitution protecting citizens against being deprived of their liberty except by due process of law, and said enactment contained in said section is not within the powers conferred by said Constitution upon Congress.

## 63.

Said court erred in overruling defendant's motion in arrest of judgment; for that, it appears by the record that defendant was found not guilty of having committed the offense charged in the first count of the indictment, and said Section 215 of the Criminal Code, if constitutional, and properly interpreted, does not confer upon this court the power to punish the defendant, as for a separate offense for each single letter deposited in the mail for the purpose of executing a single scheme or artifice of the kind or kinds set out in the indictment herein.

And the defendant respectfully shows to the court that the evidence in this cause concluded on January 30, 1915, was taken in shorthand and now on this February 2, 1915, sufficient time has not been given to have a transcript of such evidence taken, and therefore, defendant, for want of time and opportunity has been unable to set out in the foregoing assignments of error, the evidence introduced and offered, and as to which error is claimed in the rulings of the court.

The premises considered the defendant most respectfully prays that upon the evidence being transcribed he may be permitted to insert the same in these assignments of error, as required, and that for the errors hereinbefore assigned, as required, and that for the errors hereinbefore assigned, said judgment be reversed, and that this defendant have such further relief as may be consistent with the law.

JAMES H. HARKLESS,

D. R. HITE,

*Attorneys for Defendant.*

Leave granted to insert evidence when transcribed as requested.

DAVID P. DYER, *Judge.*

1 Endorsed: No. 4160. In the District Court of the United States for the District of Kansas, First Division. United States of America, Plaintiff, v. George S. Badders, Defendant. Defendant's Assignment of Errors. Filed February 3, 1915, Morton Laugh, Clerk.

*Bill of Exceptions.*

Be it remembered: That at the January 1915 Term of the said District Court of the United States for the District of Kansas, sitting in and for the First Division thereof, and on Wednesday, the twentieth day of January, 1915, the above entitled cause came on to be heard upon the application of the defendant filed herein for a continuance before Honorable David P. Dyer, Judge.

The plaintiff, United States of America, appeared by Messrs. Fred Robertson and Francis M. Brady, its attorneys.

The defendant, George S. Badders, appeared in person and by his attorneys, Messrs. D. R. Hite and James H. Harkless.

Thereupon, Mr. Harkless, of counsel for the defendant, read to the Court the application of the defendant for a continuance of the above entitled cause.

Thereupon, Mr. Robertson, of counsel for the government, produced and offered testimony, as follows:

243     GEORGE A. CLARK, called as a witness on behalf of the plaintiff, having been first duly sworn, testifies as follows:

Direct examination.

Questions by Mr. Robertson:

Q. What is your name?

A. George A. Clark.

Q. Where do you live Mr. Clark?

A. Topeka, Kansas.

Q. How long have you lived there?

A. Since 1899.

Q. How long have you lived in Kansas?

A. Since 1878.

Q. Are you the Mr. Clark who was for two terms Secretary of State for the State of Kansas?

A. Yes sir.

Q. What is your business?

A. I am an abstractor, at the present time.

Q. Are you acquainted with the defendant George S. Badders?

A. Yes sir.

Q. How long have you known him?

A. Oh five or six years probably, I first knew him when he was secretary of the Commercial Club in Topeka.

Q. Acquainted with his attorney Mr. D. R. Hite?

A. Yes sir.

Q. How long have you known him?

A. Twelve or fourteen years.

Q. What official position if any do you hold in connection with the Badders Clothing Company, a corporation?

A. Receiver.

Q. How long have you been receiver of that corporation?

A. Almost a year.

Q. In connection with what kind of a case, if you know, involving that corporation, were you appointed receiver?

A. Bankrupt.

Q. As such receiver are you in custody of certain papers of the Badders Clothing Company?

A. Yes sir.

Q. It is charged in an affidavit, not an affidavit, but a paper here called petition of defendant to postpone time of trial, that you refused defendant Badders and his counsel access to the papers and other matters that you have in your possession as receiver of the Badders Clothing Company. I wish you would state to the court just what the facts are regarding that.

A. No such refusal was ever made, Mr. Badders personally spent hours in the store going over the data; after the sale was made, the evening of the afternoon of the day of the sale, or the next day, under an agreement with Mr. Hite, Mr. Badders joined me at the store and personally helped me select all of the data that should be saved.

Q. That was done soon after you took possession as receiver?

A. No sir that was done after the sale.

Q. And when was that sale?

A. I don't remember just the date of the sale.

Q. When you speak of the sale, what do you mean?

A. I mean the day I sold the stock of merchandise.

Q. The day you sold the stock of merchandise?

A. And fixtures.

Q. Yes sir. That was some weeks, I take it, after you were appointed then, probably some days at any rate?

A. Two or three months.

Q. Two or three months after you were appointed, and the question came up as to what would be saved up there out of the store?

A. Yes sir.

Q. And Mr. Badders came and helped you select what was saved?

A. Yes sir.

Q. What was done with these things that were saved?

A. Boxed up and I have them now in my office.

Q. Did you ever upon any occasion refuse Mr. Badders or Mr. Hite access to those papers and things?

A. No request of that kind has ever been made of me since they were boxed up.

Q. There is an affidavit here of Mr. D. R. Hite concerning a conversation he had with R. L. Thomas in which he says he confirmed your refusal to let Mr. Badders see these papers and things? Who is Mr. R. L. Thomas?

A. He is an accountant that I had with me prior to the sale.

Q. Mr. Thomas is here?

A. He was here this morning, I have not seen him since.

Q. Then if I understand you correctly Mr. Clark Mr. Badders and his counsel have had every opportunity they desired so far as you are concerned to examine into anything that you have there in your possession that came from the Badders Clothing Company?



A. Mr. Hite never made any request of me at all, or Mr. Badders counsel; Mr. Badders was there frequently and went over all data.

Q. How long a time did Mr. Badders put in in going over data?

A. I don't know, he was there a number of days and several hours during each day, came in whenever he wanted to.

Cross-examination.

Questions by Mr. Hite:

Q. Mr. Clark were you present at the store room of the Badders Clothing Company at the time of a conversation between Mr. Badders and Mr. Thomas with reference to looking at the books?

A. No sir.

Q. Mr. Clark do you recall the circumstances of having told Mr. Thomas not to let Mr. Badders look at any of the books and papers?

A. No sir.

Q. Did you ever do that?

A. No sir.

Q. Did you ever give any such instruction to Mr. Thomas.

A. No sir.

Q. Did Mr. Thomas call your attention to the circumstance of Hite calling him over the telephone after the adjudication in bankruptcy and stating that Mr. Badders had been refused access to the books and want to know if that was by your instructions?

A. That you called me up?

Q. No sir, that I called up Mr. Thomas; did Mr. Thomas tell you that?

A. No sir.

Q. Do you know of any occasion when Mr. Badders was in the Badders Clothing Company store after this indictment was found?

A. When was the indictment found?

Q. I think on April 20th, Mr. Clark as near as I can remember.

The Court: Let's see.

A. I think the sale was prior to that time and I think the store had been sold prior to that time and there was no store.

Q. So at no time subsequent to this indictment has Mr. Badders had access to any of these books or papers, has he?

A. No sir.

Q. Mr. Clark isn't it a fact the last time Mr. Badders was in the Badders Clothing Company store was the occasion of your finding some money there that you had overlooked and that was early April?

A. That was the day we were packing up the data.

Q. Now at that time did Mr. Badders go over any of those papers and look at them and examine them in any way that you know of?

A. He selected what should be preserved.

Q. Well what do you mean by that precisely Mr. Clark?

A. I mean in taking up all the data there I would refer to it



and asked him if he wanted that saved, and if he said yes, we took it with us.

Q. And you say all of that matter is now in your possession?

A. Yes sir.

Q. And is boxed up?

A. Yes sir.

Q. And in Topeka, Kansas?

A. Yes sir.

Q. Whereabouts in that city is it?

A. In my office.

Q. And where is your office?

246½ A. Well, now, let me correct that, it is in my old office just across the alley in the rear of the New England building; I have since moved; I moved on the first of July into the New England Building and these boxes are still in the old building.

Q. Do you know, Mr. Clark, as a matter of fact that there is pending in the Court of Appeals a matter contesting the validity of your appointment as receiver?

A. I have heard of it, yes sir.

(Witness excused.)

F. L. CAMPBELL, called as a witness on behalf of the plaintiff, having been first duly sworn, testifies, as follows:

Direct examination.

Questions by Mr. Robertson:

Q. Do you recall when the term of court, the last term of court was held at Leavenworth, Mr. Campbell, and if so, when was it?

A. It convened on the second Monday in October last year.

Q. Do you recall the fact of the Badders case being on the docket there at that time?

A. I do.

Q. And numerous motions that were filed and argued?

A. I do.

Q. Can you advise the court of the day when that argument was had?

A. I might if I would refer to the files.

Q. You may do so.

Mr. Hite: I think we can shorten that, Your Honor, to the first day of the term; Judge Van Valkenburgh came up that day.

The Court: What was the date of the first day of the term?

Mr. Campbell: October 11.

The Court: Go on, you may examine this witness about it.

A. On October 13, 1914.

Q. Mr. Campbell can you say whether the government had its witnesses there present at that time ready for trial?

247 A. The witnesses were present.

Q. Yes sir. Do you know, and if you do, please state whether or not this case was, after the hearing of the motions and

considering matters there, set for trial by Judge Van Valkenburgh at the Topeka term, the term that intervened there between October Term in Leavenworth and the present term in Kansas City?

A. I couldn't say positively without the record on that.

Q. Were you familiar with the fact that the Judge first determined to have it sent over to Topeka, and then it was changed later for some reason to Kansas City?

A. I know that was the intention at the time to have the case come up at the special December Term at Topeka, and then it was continued over specially to this January term.

Q. Do you know why it came to the January Term here?

A. My recollection is now, without consulting the record, it was on the application of the defendant.

Cross-examination.

Questions by Mr. Harkless:

Q. Isn't it a fact that the case was continued at that term by agreement of the United States Attorney and counsel representing Mr. Badders?

The Court: You mean at Topeka?

Mr. Harkless: At Leavenworth, continued to this time?

A. The journal entries and the files here will show, the journal entry will show.

Q. The Journal entry does not show that, does it; it shows it was continued; there was no application filed by anybody for a continuance, was there, there was no application filed?

A. At the October term?

Q. At Leavenworth?

A. No sir, my recollection is there was no application filed.

Q. Just some reason why this case went over notwithstanding the government's witnesses were there.

The Court: I take it for granted it was or it wouldn't be here.

Q. Do you know why it was.

248 A. After the demurrers and various motions were passed on the counsel for the defendant moved to continue the case over from that term.

Q. And the other parties consented to it?

A. Well I don't recall whether the record shows by consent.

Q. There was no application in writing?

A. Well I can tell by referring to the files.

Q. The Court: It is not material. I will not stop to find out.

Mr. Robertson: I want to show it was brought here to Kansas City on the solicitation of the gentleman examining this witness; I thought this witness knew about it.

(Witness excused.)

Mr. Robertson: Offer the affidavit of John D. Jordan, Clerk of the Circuit Court of Appeals. (Reading same, which is as follows, to wit:)

in the District Court of the United States, District of Kansas, First Division.

No. 4160.

UNITED STATES OF AMERICA, Plaintiff,

v.

GEORGE S. BADDERS, Defendant.

UNITED STATES OF AMERICA,  
*Eastern District of Missouri, ss:*

I, John D. Jordan, being first duly sworn, on oath say: That I am now and at all times for more than one year just last past constantly have been clerk of the United States Circuit Court of Appeals for the Eighth Circuit.

That, as is the usual custom in my office, as said clerk, upon September 1, 1914, or shortly thereafter, I mailed or caused to be mailed, to the respective counsel for all parties, a proposed assignment of cases for hearing at the December, 1914, term of said court, at St. Louis, Missouri, a duplicate copy of which proposed assignment is hereto attached, marked Exhibit A, and is made a part hereof.

That subsequently, and on October 3rd, 1914, or within a day or two thereafter, I mailed or caused to be mailed out to all counsel a final assignment of cases for hearing at the said December 1914, term of said Circuit Court of Appeals at St. Louis, Missouri, a duplicate copy of which final assignment is hereto attached, marked Exhibit B, and is made a part hereof; that among said counsel and attorneys to whom said assignments hereto attached as Exhibits A and B, were sent, as aforesaid, were J. H. Kless, of Kansas City, Missouri, and D. R. Hite, of Topeka, Kansas, attorneys of record in said Circuit Court of Appeals for George S. Badders Clothing Company; that said assignments, Exhibits A and B, were each enclosed in duly addressed envelopes, properly sealed, and were, shortly after the dates which they respectively bear, after being so enclosed and addressed, deposited in the United States Postoffice at St. Louis, Missouri, to be transmitted to said addressees.

JOHN D. JORDAN.

Subscribed and sworn to before me this 13th day of January, 1915.

[SEAL.]

IRWIN MITCHELL,

*United States Commissioner at St. Louis, Missouri.*

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**Ex. A.**

United States Circuit Court of Appeals, Eighth Circuit.

*Proposed Assignment of Cases for Hearing at the December Term, 1914, at St. Louis, Missouri.*

Notice to Counsel.

ST. LOUIS, MO., September 1, 1914.

The following is a proposed assignment of cases to be heard at the December Term, 1914, of said court, to be held at St. Louis, Missouri.

Stipulations of counsel to set their cases on other days will be considered by the court in making the final assignment of cases, if received on or before October 1, 1914. If no such stipulation is received in a case, it must be argued, or submitted on briefs, when reached on the regular call, or be continued to the next session of the court.

As the filing of stipulations above contemplated will probably disarrange the temporary setting of cases, counsel who desire that their cases be heard on the days assigned in the present list, may so stipulate, but such stipulation must be filed on or before October 1, 1914.

The final list of cases will be printed and mailed to counsel on or about the first day of October, 1914, and no cases filed and docketed after the last named date will be assigned to be heard at the December Term, unless advanced by special order of the court.

JOHN D. JORDAN, *Clerk*.

NOTE.—The rules require records upon appeals and writs of error to be printed 60 days; briefs of plaintiffs in error and appellants to be filed 40 days, and briefs of defendants in error and appellees to be filed 10 days before the day for which the case is assigned to be heard.

The printing of records and filing of briefs upon original petitions to revise are governed by Rules 40 and 41.

Monday, December 7, 1914.

- 3900. Alvin H. Stout v. United States of America.
- 3928. A. L. Wolff, et al. v. State National Bank of Shawnee.
- 3934. I. E. Trent, et al. v. United States of America.
- 3994. Mitchell C. Perara v. United States of America.
- 4043. George B. Vaughan et al. v. McArthur Brothers Company.
- 4064. J. F. Ripley, et al. v. The Jackson Zinc and Lead Company.
- 4072. The Linden Investment Company v. Honstain Brothers Company.
- 4075. O. Kemmerer v. Midland Oil and Drilling Company.

Tuesday, December 8, 1914.

4087. Raymond H. Hoss, et al. v. United States of America.  
4088. Raymond H. Hoss v. United States of America.  
4091. John W. Talbot, et al. v. Independent Order of Owls, et al.  
4104. Kansas Gas and Electric Company v. The City of Cherryvale,  
et al.  
4107. R. M. Lee v. Kansas City Southern Railway Company.  
137, Orig. T. E. Armstrong v. Hugh T. Fisher, Trustee in Bank-  
ruptcy, etc.  
4108. Smith and Company, Ltd. v. Kingfalfa Mills.  
4109. Elvie L. Parsons v. William Trowbridge, Executor, etc.  
4110. Charles W. Johnson v. United States of America.

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Wednesday, December 9, 1914.

4119. L. W. Clapp v. United States of America.  
4120. The Pope-Hartford Motor Car Company v. The Waverly  
Company.  
4128. Old Colony Trust Company v. Wickard Bros., et al. Inter-  
veners, etc.  
4180. Fort Dodge, Des Moines and Southern Railroad Co. v. Wick-  
ard Bros. and about 150 others, Interveners.  
4145. Joseph Filler v. Joseph Schlitz Brewing Company.  
4149. L. Lewellen v. United States of America.  
4145. H. D. Williams Cooperage Company v. United States of  
America.  
4157. Harry D. Todd v. United States of America.

Monday, December 14, 1914.

4168. City of Texarkana, Arkansas v. Texarkana Water Corpora-  
tion.  
4169. United States of America v. Christopher James Davis Deans.  
4170. United Well Works, et al. v. Mahlon E. Layne, et al.  
4175. S. L. Whitfield, Immigrant Inspector, etc., et al. v. George  
Hanges, et al.  
4178. Benjamin F. Moffat v. United States of America.  
4184. Newton B. Childs v. Missouri, Kansas and Texas Railroad Co.  
4187. Frank C. Heim v. The Robt. G. Speer Corporation, et al.  
4192. Browns Valley State Bank, et al. v. Clement F. Porter.

Tuesday, December 15, 1914.

4193. A. W. Allen, et al. v. Walter H. Rhodes, Successory Receiver,  
etc.  
4194. Woody Stewart v. United States of America.  
4197. Frederic A. Delano, et al. v. Albert Pierce.  
4198. W. S. Farish v. State Banking Board of the State of Okla-  
homa, et al.  
4199. State Banking Board of the State of Oklahoma, et al. v. W. S.  
Farish.

- 142, Orig. Charles W. Smallwood, Trustee in Bankruptcy, etc. v. George Moore, et al.  
 4200. Hiram Chase v. United States of America, as Trustee and Guardian, etc.  
 4201. Howard Weber v. Freeman E. Hertz, et al.

Wednesday, December 16, 1914.

4203. John P. Galbraith, as Trustee, etc. v. First National Bank of Alexandria, Minn.  
 4204. G. M. Rushing, et al., Administrators, etc. v. Manhattan Life Insurance Company of New York.  
 4205. United States of America v. Independent Packet Company.  
 4206. Henry C. Flower, Trustee v. Commercial Trust Company.  
 4207. Henry C. Flower, Trustee v. Central National Bank.  
 4208. Clarence L. Hugin, Trustee v. Central National Bank.  
 4209. C. O. Robinson, et al. v. The Long Gas Company, et al.  
 4210. Frederick von Baumbach, Collector of Internal Revenue v. Crescent Creamery Company.  
 4211. Frederick von Baumbach, Collector of Internal Revenue v. Crescent Creamery Company.  
 145, Orig. Joseph Pollack v. Meyer Brothers Drug Company, et al.

Monday, December 21, 1914.

4213. The National Bank of Commerce in St. Louis v. Equitable Trust Co.  
 4215. New York Scaffolding Company v. Egbert Whitney.  
     4217. United States of America v. William J. Cook, et al.  
 252   4221. Fannie M. Moore v. United States of America.  
     4222. D. C. Wise Coal Company, et al. v. Fred O. Small, Trustee, etc.  
 4224. Jay Brotherton, et al. v. The Bank of Ottawa Company, et al.  
     146, Orig. William J. Parmeter v. Roy Butler, as Trustee, etc., et al.  
 4225. Missouri and Kansas Interurban Railway Co. v. J. A. Edson, Receiver.

Tuesday, December 22, 1914.

4226. Colorado Yule Marble Company v. George J. S. Collins.  
 4227. Kiefer Oil & Gas Company v. D. A. McDougal.  
 4228. William J. Amicker v. David Gunsburg, et al.  
 4229. Edmund W. Mudge v. Black-Sheridan and Wilson, et al.  
 4230. H. L. Brenneman, et al. v. Black-Sheridan and Wilson, et al.  
 4231. Chesapeake and Ohio Coal and Coke Company v. Black-Sheridan and Wilson, et al.  
 4232. The T. L. Smith Company v. Isaac H. Orr, Receiver.  
 4233. Cohen-Schwartz Rail & Steel Co. v. Black-Sheridan and Wilson, et al.

- 4234. W. H. Smollinger, doing business as the Iron Mountain Stock Farm v. Black-Sheridan and Wilson, et al.
- 4235. Jermain P. Quinette v. The Pullman Company, et al.
- 4236. Gust Jouras v. Harry C. Allen, Immigration Inspector.
- 4237. Percy A. Hipple, et al. v. Bates County in the State of Missouri.

Monday, January 4, 1915.

- 4239. William Fetzner v. Dempster Mill Manufacturing Company.
- 4240. Alex Sellers v. United States of America.
- 4244. The Manhattan City and Interurban Railway Company, et al. v. General Electric Company.
- 4245. Walter Fawcett v. United States of America.
- 4246. Joe Johnson v. United States of America.
- 4247. William Chalk v. United States of America.
- 4248. Central Trust Company of New York v. City of Duluth, et al.
- 4251. Cribben & Sexton Company, et al. v. North End House Furnishing Company.

Tuesday, January 5, 1915.

- 147. Orig. James Harrison, et al. v. Hon. Smith McPherson, Judge, etc.
- 4253. James A. Harris, Trustee, etc. v. H. E. Dodge, et al.
- 4254. United States of America, ex rel. United Iron Works Co., et al. v. William W. Luyster, et al.
- 4255. United States of America v. Helen F. Woods.
- 4274. Helen F. Woods v. United States of America.
- 4256. United States of America v. J. B. Stigall.
- 4257. John Crites v. United States of America.
- 4258. H. E. Dodge, et al. v. James A. Harris, Trustee, etc.
- 4259. St. Joseph Lead Company v. Walerty Semanski.

Wednesday, January 6, 1915.

- 4260. The National Bank of Commerce in St. Louis v. E. B. Allen, United States Collector of Internal Revenue, etc.
- 4262. United States of America v. Owen F. Turner.
- 4270. United States on the relation of Fall City Construction Co. vs. W. F. Jimmerson, as Assessor of Monroe County, Arkansas, et al.
- 253 4271. Thomas L. Chadbourne, Jr., et al. v. The Equitable Trust Company of New York, et al.
- 4272. Eli P. Williams, et al. v. United States of America.
- 4273. Pennsylvania Mining Company v. Frank Jarnigan.
- 4275. W. H. Watlington v. United States of America.

Monday, January 11, 1915.

- 4276. Northwestern Port Huron Company v. Howard Babcock, et al.
- 4277. Albert M. Wheeler v. The Hartford Life Insurance Company.
- 4278. Lee Wilson & Company v. United States.



- 4279. Thomas Isbell v. United States of America.
- 4281. Fidelity Trust Company v. The Hutchinson Chemical & Alkali Company, et al.
- 4282. Thomas W. Morgan, Warden, etc. v. Dan A. Ward, et al.
- 4283. Morgan Jones, et al. v. Missouri-Edison Electric Co., et al.
- 4284. George W. Bellamy, et al., as Railroad Commissioners of Arkansas, et al. v. St. Louis, Iron Mountain & Southern Ry. Co.

Tuesday, January 12, 1915.

- 4285. Phillip A. Cooley, et al. v. Thomas W. Morgan.
- 4287. United States of America v. Western Investment Co., et al.
- 4288. J. W. Duvall, et al. v. The Synod of Kansas of the Presbyterian Church, etc., et al.
- 4289. J. F. Shepherd, et al. v. James M. Barkley, Moderator, etc., et al.
- 4290. Miles Collins, Administrator, etc. v. People's Power Company.
- 148, Orig. Greeley A. Jones v. J. C. Robb and Company.
- 4291. James Harrison, et al. v. William S. Richards.
- 4292. The Badders Clothing Company v. Burnham-Munger-Root Dry Goods Co., et al. (Error.)
- 4293. The Badders Clothing Company v. Burnham-Munger-Root Dry Goods Co., et al. (Appeal.)
- 139, Orig. The Badders Clothing Co., et al. v. The Burnham-Munger-Root Dry Goods Co., et al.
- 4294. Don A. Moun Day, et al. v. United States of America.

Wednesday, January 13, 1915.

- 4296. V. O. Johnston, et al. v. Jesse A. Shearer, et al.
- 4297. Guaranty Trust Co. of New York, et al. v. Bettendorf Axle Company.
- 4300. G. H. York v. United States.
- 4301. Christopher J. Lawless v. Mark W. Woods, substituted for Werter S. Farrar.
- 4302. William Short v. United States of America.
- 4303. William E. Thomas, Executor, etc. et al. v. Harry Anderson, et al.
- 4305. Union Pacific Railroad Co., et al. v. Charles A. Frank, et al.
- 4306. Charles A. Frank, et al. v. Union Pacific Railroad Co., et al.

Monday, January 18, 1915. °

- 4307. Northern Central Coal Company v. John Calvin Hughes.
- 4308. Ida R. Roberts, et al. v. Myra J. Roberts.
- 149, Orig. Daniel E. Strub v. Hugh S. Gamble, as Trustee, etc.
- 4310. The Western Union Telegraph Co., Intervener, v. United States and Mexican Trust Co., et al.

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## Ex B.

United States Circuit Court of Appeals, Eighth Circuit.

*Final Assignment of Cases for Hearing at the December Term,  
1914, at St. Louis, Missouri.*

This List Supersedes the List of September 1, 1914.

Notice to Counsel.

ST. LOUIS, Mo., October 3, 1914.

The rules require records to be printed 60 days; briefs of plaintiffs a error and appellants to be filed 40 days, and briefs of defendants a error and appellees to be filed 10 days before the day for which the case is assigned to be heard.

The printing of records and filing of briefs upon original petitions revise are governed by Rules 40 and 41.

Cases must be argued, or submitted on briefs, when reached on the regular call, or be continued to a succeeding term, in accordance with the provisions of Rule Three.

Monday, December 7, 1914.

10. The Western Union Telegraph Company, Intervener v. United States and Mexican Trust Company et al.
70. The Work Mining and Milling Company v. The Doctor Jack Pot Mining Company.
81. Fireball Gas Tank and Illuminating Company, et al. v. Commercial Acetylene Company, et al.
28. A. L. Wolff, et al. v. State National Bank of Shawnee.
34. I. E. Trent, et al. v. United States of America.
94. Mitchell C. Perara v. United States of America.
43. George B. Vaughan, et al. v. McArthur Brothers Company.
54. J. F. Ripley, et al. v. The Jackson Zinc and Lead Company.
2. The Linden Investment Company v. Honstain Brothers Company.
5. O. Kemmerer v. Midland Oil and Drilling Company.

Tuesday, December 8, 1914.

7. Raymond H. Hoss, et al. v. United States of America.
8. Raymond H. Hoss v. United States of America.
1. John W. Talbot, et al. v. Independent Order of Owls, et al.
5. United States of America v. Lewis Koleno, et al.
4. Kansas Gas and Electric Company v. The City of Cherryvale, et al.
7. R. M. Lee v. Kansas City Southern Railway Company.
8. Smith and Company, Ltd. v. Kingfalfa Mills.
9. Elvie L. Parsons v. William Trowbridge, Executor, etc.
9. Charles W. Johnson v. United States of America.

Wednesday, December 9, 1914.

4119. L. W. Clapp v. United States of America.  
4120. The Pope-Hartford Motor Car Company v. The Waverly Company.  
4127. George L. Colburn, et al. v. United States of America.  
4145. Joseph Filler v. Joseph Schlitz Brewing Company.  
4155. H. D. Williams Cooperage Company v. United States of America.  
4157. Harry D. Todd v. United States of America.  
4168. City of Texarkana, Arkansas v. Texarkana Water Corporation.

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Monday, December 14, 1914.

4169. United States of America v. Christopher James Davis Deans.  
4170. United Well Works, et al. v. Mahlon E. Layne, et al.  
4175. S. L. Whitfield, Immigrant Inspector, etc., et al. v. George Hanges, et al.  
4178. Benjamin F. Moffatt v. United States of America.  
4184. Newton B. Childs v. Missouri, Kansas and Texas Railroad Co.  
4187. Frank C. Heim v. The Robt. G. Speer Corporation, et al.  
4192. Browns Valley State Bank, et al. v. Clement F. Porter.  
4324. Clarence Griggs, et al., as Executors, etc. v. E. E. Nadeau.

Tuesday, December 15, 1914.

4149. L. Lewellen v. United States of America.  
4311. Henry Baker v. United States of America.  
4193. A. W. Allen, et al. v. Walter H. Rhodes, Successory Receiver, etc.  
4198. W. S. Farish v. State Banking Board of the State of Oklahoma, et al.  
4199. State Banking Board of the State of Oklahoma, et al. v. W. S. Farish.  
142. Orig. Charles W. Smallwood, Trustee in Bankruptcy, etc. v. George Moore, et al.  
4200. Hiram Chase v. United States of America, as Trustee and Guardian, etc.  
4201. Howard Weber v. Freeman E. Hertz, et al.

Wednesday, December 16, 1914.

4203. John P. Galbraith, as Trustee, etc. v. First National Bank of Alexandria, Minn.  
4204. G. M. Rushing, et al., Administrators, etc. v. Manhattan Life Insurance Company of New York.  
4205. United States of America v. Independent Packet Company.  
4209. C. O. Robinson, et al. v. The Long Gas Company, et al.  
4210. Frederick von Baumbach, Collector of Internal Revenue v. Crescent Creamery Company.  
4211. Frederick von Baumbach, Collector of Internal Revenue v. Crescent Creamery Company.

5. Orig. Joseph Pollack v. Meyer Brothers Drug Company, et al.
3. The National Bank of Commerce in St. Louis v. Equitable Trust Co.
5. New York Scaffolding Company v. Egbert Whitney.

Monday, December 21, 1914.

9. Harry B. Gardner v. United States of America.
0. Harry M. Coudrey v. United States of America.
2. D. C. Wise Coal Company, et al. v. Fred O. Small, Trustee, etc.
4. Woody Stewart v. United States of America.
7. United States of America v. William J. Cook, et al.
1. Fannie M. Moore v. United States of America.
3. United States of America v. J. B. Stigall.
4. Jay Brotherton, et al. v. The Bank of Ottawa Company, et al.
3. Orig. William J. Parmeter v. Roy Butler, as Trustee, etc., et al.

Tuesday, December 22, 1914.

5. Missouri and Kansas Interurban Railway Co. v. J. A. Edson, Receiver.
3. Colorado Yule Marble Company v. George J. S. Collins.
6. Kiefer Oil & Gas Company v. D. A. McDougal.
5. G. W. Collier v. United States of America.
9. Edmund W. Mudge v. Black-Sheridan and Wilson, et al.
9. H. L. Brenneman, et al. v. Black-Sheridan and Wilson, et al.
3. Chesapeake and Ohio Coal and Coke Company v. Black-Sheridan and Wilson, et al.
6. The T. L. Smith Company v. Isaac H. Orr, Receiver.
- Cohen-Schwartz Rail & Steel Co. v. Black-Sheridan and Wilson, et al.
- W. H. Smollinger, doing business as the Iron Mountain Stock Farm v. Black-Sheridan and Wilson, et al.
- Jermain P. Quinette v. The Pullman Company, et al.
- Gust Jours v. Harry C. Allen, Immigration Inspector.

Monday, January 4, 1915.

- Frederic A. Delano, et al. v. Albert Pierce.
- Percy A. Hipple, et al. v. Bates County in the State of Missouri.
- William Fetzer v. Dempster Mill Manufacturing Company.
- Alex Sellers v. United States of America.
- Walter Fawcett v. United States of America.
- Joe Johnson v. United States of America.
- William Chalk v. United States of America.
- Cribben & Sexton Company, et al. v. North End House Furnishing Company.

Tuesday, January 5, 1915.

- William J. Anicker v. David Gunsburg, et al.
- United States of America v. Union Pacific Railroad Company.

- 4243. United States of America v. Union Pacific Railroad Company.
- 4244. The Manhattan City and Interurban Railway Company, et al.  
v. General Electric Company.
- 4248. Central Trust Company of New York v. City of Duluth, et al.
- 4257. John Crites v. United States of America.
- 4279. Thomas Isbell v. United States of America.
- 147. Orig. James Harrison, et al. v. Hon. Smith McPherson, Judge,  
etc.

Wednesday, January 6, 1915.

- 3900. Alvin H. Stout v. United States of America.
- 4253. James A. Harris, Trustee, etc. v. H. E. Dodge, et al.
- 4254. United States of America, ex rel. United Iron Works Co., et al.  
v. William W. Luyster, et al.
- 4258. H. E. Dodge, et al. v. James A. Harris, Trustee, etc.
- 4259. St. Joseph Lead Company v. Walerty Semanski.
- 4260. The National Bank of Commerce in St. Louis v. E. B. Allen,  
United States Collector of Internal Revenue, etc.
- 4262. United States of America v. Owen F. Turner.
- 4270. United States on the relation of Fall City Construction Co. v.  
W. F. Jimmerson, as Assessor of Monroe County, Arkansas,  
et al.

Monday, January 11, 1915.

- 4206. Henry C. Flower, Trustee v. Commercial Trust Company.
- 4207. Henry C. Flower, Trustee v. Central National Bank.
- 4208. Clarence L. Hugin, Trustee v. Central National Bank.
- 4271. Thomas L. Chadbourne, Jr., et al. v. The Equitable Trust  
Company of New York, et al.
- 4272. Eli P. Williams, et al. v. United States of America.
- 4255. United States of America v. Helen F. Woods.
- 4274. Helen F. Woods v. United States of America.
- 4273. Pennsylvania Mining Company v. Frank Jarnigan.
- 4276. Northwestern Port Huron Company v. Howard Babcock, et al.
- 4314. Clement F. Porter, Jr., Receiver, etc. v. F. M. Davies & Co.  
(Error.)
- 4327. Clement F. Porter, Jr., Receiver, etc., v. F. M. Davies & Co.  
(Appeal.)

Tuesday, January 12, 1915.

- 4275. W. H. Watlington v. United States of America.
- 4277. Albert M. Wheeler v. The Hartford Life Insurance Company.
- 4278. Lee Wilson & Company v. United States.
- 4281. Fidelity Trust Company v. The Hutchinson Chemical & Alkali  
Company, et al.
- 4282. Thomas W. Morgan, Warden, etc. v. Dan A. Ward, et al.
- 4283. Morgan Jones, et al. v. Missouri-Edison Electric Co., et al.
- 4284. George W. Bellamy, et al., as Railroad Commissioners of  
Arkansas, et al. v. St. Louis, Iron Mountain & Southern  
Ry. Co.
- 4287. United States of America v. Western Investment Co., et al.

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Wednesday, January 13, 1915.

4285. Phillip A. Cooley, et al. v. Thomas W. Morgan.  
 4288. J. W. Duvall, et al. v. The Synod of Kansas of the Presbyterian Church, etc., et al.  
 4289. J. F. Shepherd, et al. v. James M. Barkley, Moderator, etc., et al.  
 4290. Miles Collins, Administrator, etc. v. People's Power Company.  
 148. Orig. Greeley A. Jones v. J. C. Robb and Company.  
 4291. James Harrison, et al. v. William S. Richards.  
 4297. Guaranty Trust Co. of New York, et al. v. Bettendorf Axle Company.  
 4303. William E. Thomas, Executor, etc. et al. v. Harry Anderson, et al.

Monday, January 18, 1915.

3777. Malcolm Trapp v. Territory of New Mexico.  
 3778. Jim Walker v. Territory of New Mexico.  
 4128. Old Colony Trust Company v. Wickard Bros., et al., Interveners, etc.  
 4180. Fort Dodge, Des Moines and Southern Railroad Co. v. Wickard Bros. and about 150 others, Interveners.  
 137. Orig. T. E. Armstrong v. Hugh T. Fisher, Trustee in Bankruptcy, etc.  
 4292. The Badders Clothing Company v. Burnham-Munger-Root Dry Goods Co., et al. (Error.)  
 4293. The Badders Clothing Company v. Burnham-Munger-Root Dry Goods Co., et al. (Appeal.)  
 139. Orig. The Badders Clothing Co., et al. v. The Burnham-Munger-Root Dry Goods Co., et al.  
 4294. Don A. Moun Day, et al. v. United States of America.

Tuesday, January 19, 1915.

4296. V. O. Johnston, et al. v. Jesse A. Shearer, et al.  
 1300. G. H. York v. United States.  
 1301. Christopher J. Lawless v. Mark W. Woods, substituted for Werter S. Farrar.  
 1302. William Short v. United States of America.  
 1305. Union Pacific Railroad Co., et al v. Charles A. Frank, et al.  
 1306. Charles A. Frank, et al. v. Union Pacific Railroad Co., et al.  
 1307. Northern Central Coal Company v. John Calvin Hughes.  
 1308. Ida R. Roberts, et al. v. Myra J. Roberts.

Wednesday, January 20, 1915.

1309. E. N. Gillespie v. Steven Collier, a minor, etc.  
 149. Orig. Daniel E. Strub v. Hugh S. Gamble, as Trustee, etc.  
 1312. Nelson Charles Chapman, et al. v. Chemical Building Company, et al.  
 1316. Frank E. Wear v. Imperial Window Glass Company.

4317. Clyde F. Sugg, et al. v. John Eskew, et al.  
4323. Abraham R. Byrd v. George Allen Hall, et al.  
4318. Arch Wright v. United States of America.  
4319. W. F. Parks v. United States of America.

Monday, January 25, 1915.

4320. Illinois Central Railroad Company v. Lillie M. Stewart, Administratrix, etc.  
4322. A. H. Sharum v. Whitehead Coal Mining Company.  
4325. Bartlett & Kling, a corporation, et al. v. American Radiator Company, et al.  
4328. Westinghouse Church Kerr & Company, Intervener v. United States & Mexican Trust Company.  
4331. Crescent Milling Company v. The H. N. Strait Manufacturing Company.  
4332. International Lumber Company v. United States of America.  
4333. Cloquet Lumber Company v. Granville A. Burns.  
4326. The Atchison, Topeka and Santa Fe Ry. Co. v. The Board of County Commissioners of the County of Douglas, State of Colorado, et al.

Tuesday, January 26, 1915.

4334. Ezekiel M. Roberts, et al. v. Cherry Cheer Company, a corporation.  
4335. Phin Kimball, doing business, etc. v. The Berlin Machine Works, a corporation.  
4336. Henry G. Dinet v. The City of Rapid City.  
4337. David C. Gilliland v. Cecil F. Adamson.

258 JAMES H. HARKLESS, called as a witness on behalf of the plaintiff, having been first duly sworn, testifies, as follows:

Direct examination.

Questions by Mr. Robertson:

Q. Mr. Harkless did you mean by your verification to the petition for continuance to testify that the defendant had been refused access to the papers and things mentioned in this petition by Mr. Clark?

A. No, I know nothing about that, and the affidavit shows it on its face. I don't pretend to testify about anything I don't have some knowledge about usually, and I have none about that.

Q. Are you acquainted with Mr. E. D. McKeever.

A. Yes sir.

Q. Is he here today?

A. Well I hope so, I don't see him here.

Mr. Hite: He went away last night; he had to go to Topeka.

Q. He was here yesterday?

A. Yes sir.



Q. He is one of the attorneys for the defendant in this case is he not?

A. Yes sir.

Q. Was he one of the attorneys for Mr. Badders in the bankruptcy matters at St. Louis?

A. No sir.

Q. Are you acquainted with the experience and qualifications of Mr. McKeever as a trial lawyer?

A. No, except by rumor, I understand he is one of the best trial lawyers in this state, from general reputation.

The Court: What are we going to do? Going into the qualifications of all these lawyers from Kansas?

Mr. Robertson: No, Your Honor, but counsel verified an application for continuance in which he uses this expression: "Your petitioner further shows his counsel retained by him for his defense in this case, this criminal case, are also counsel for said Clothing Company; that said counsel have been employed in the preparing for the arguments and hearing in the Circuit Court of Appeals"; so, Your Honor, it would appear on the record here all the counsel of Mr. Badders in the criminal case were engaged over in the Court of Appeals, which is not true.

(Witness excused.)

Mr. Robertson: Mr. R. L. Thomas who has been subpoenaed and who at this moment does not seem to be in the court room, would, if present, Your Honor, testify that he never upon any occasion refused to the defendant or to his counsel D. R. Hite, or to any one else who was acting in the interest of the defendant, access to any of the books, papers and records referred to in the petition for continuance; the witness Mr. Thomas would further testify, if present, that he was never instructed by George A. Clark, his employer, the receiver, who has already testified, to refuse Mr. Badders or his counsel access to any of these matters referred to in this petition, and he did not so refuse Mr. Hite or Mr. Badders, but, on the contrary was very courteous to them and endeavored to assist Mr. Badders in any way that he could in an investigation of such things as he desired to look into and take data from, and that this he did upon all occasions.

The Court: The question is, will counsel admit if Mr. Thomas was here he would make that statement?

Mr. Hite: No, Your Honor.

Mr. Brady: Mr. Thomas is over in the city, and misunderstood, he thought he was excused to go home and left his hotel to get a shave, and he is at one of the barber shops, and they are looking for him; it was a misunderstanding as to his being excused is the reason he is not here.

The Court: Sure he is at a barber shop? I don't know how it is in Kansas, but other places they go elsewhere, very rarely go to barber shops. That the only witness you want to introduce?

260 Mr. Robertson: I think so, Your Honor.

The Court: Any one on the other side you want to swear.

Mr. Harkless: Yes.

The Court: Swear them.

D. R. HITE, called as a witness on behalf of the defendant, having been first duly sworn, testifies, as follows:

Direct examination.

Questions by Mr. Harkless:

Q. Mr. Hite would you tell the court about this conversation with Mr. Thomas in reference to these books?

Mr. Robertson: Just a moment, before going into that record I want to ask you another question. (To Mr. Harkless)

Q. These matters referred to in the petition for continuance as being on for hearing on the 18th inst. at St. Louis, I would ask you whether they have been disposed of or not, Mr. Harkless?

A. The case was argued, as I have already stated to the court, and submitted, and time given us, five days, to file a brief, which we have it to do within the next three or four days.

Mr. Hite: (Answering.)

A. Soon after the adjudication in bankruptcy on March 5, Mr. Badders went to the store of the Badders Clothing Company for the purpose of making up his schedules in bankruptcy for the Badders Clothing Company, and as I recall it, on the same day he was proceeded against in a personal bankruptcy proceeding brought against him. And either that day or the next day, or at all events right at that time, I was informed by Mr. Badders, substantially, that Mr. Thomas would not let him look at the books or the papers, and I thereupon called over the telephone to Mr. Thomas, with whom I have been acquainted for a great many years, he was at one time clerk of our court there, and asked him about it; and my understanding of Mr. Thomas' reply was that Mr. Clark had instructed

him, in no circumstances to let Mr. Badders have any access 260½ to the books or papers in the store room at all. And I asked

Mr. Thomas please to try and remember the circumstances because we were in rather a peculiar situation, and he said that he would. Now in fairness to Mr. Thomas who is not here, a few days ago I went up on the train with him after this application was filed, and had some talk with him about this conversation over the telephone, and Mr. Thomas told me that his remembrance of it was that he had stated that Mr. Clark didn't want Mr. Badders to take any of these papers out of the building. And in fairness, further, I would say, that Mr. Thomas is rather of the opinion that the conversation over the telephone was not to the point that I have stated, as I have stated it, but my recollection of the matter is quite clear, and I called Mr. Thomas for the purpose of verifying the position as I understood it. I learn also that a Mr. Fig as well as Mr. Burdick were present at the time this matter took place, where Mr. Thomas told Mr. Badders he could not have access to the books and paper. About that, I do not know, however. That is the extent of my

knowledge about this other matter. I may say that I have never personally made any request to Mr. Clark at all for access to the papers and of course have never been denied. I may say further, Mr. Clark has on more than one occasion expressed to me his suspicion of Mr. Badders and that he didn't want him about the store. I believe that is all I know about the matter of the request to see the books, Mr. Harkless.

Cross-examination.

Questions by Mr. Robertson:

Q. Mr. Hite, you say you went up to Topeka on the train in company with Mr. Thomas the other day?

A. Yes sir.

Q. What day was that?

A. Well it was the first day of the term of this court, now, as I remember it that would be the 11th, no, it was not, it was the next day, Tuesday night.

Q. And Mr. Thomas called your attention to this matter?

A. No, I called his attention to it because of something I had seen in the newspaper.

Q. At any rate you were engaged in a conversation about it?

A. Yes sir.

Q. And Mr. Thomas apprised you his understanding was the opposite of yours as regarding the telephone conversation?

A. No, not the opposite of it, but that I possibly had misunderstood what he intended it to mean, and it is possible I did, I don't think so though.

Q. And by way of apology to Mr. Thomas, did you not in that conversation say, in rather a facetious manner, "Oh you know we've got to have a continuance" or words to that effect?

A. Nothing of that kind.

(Witness excused.)

The Court: If you are through with what you desire to offer in testimony I will hear counsel in argument, not lengthy, short.

Whereupon, Mr. Harkless, of counsel for the defendant, presented argument to the court on the petition for a continuance.

Whereupon, Mr. Hite, of counsel for the defendant, presented his argument to the court on the petition for a continuance.

Whereupon, Mr. Robertson, of counsel for the government, presented his argument to the court on the petition for a continuance.

The Court: This case was originally set here, as I understand, the 19th of the month, at which time Judge Van Valkenburgh was to be present and try the case. I was so informed by Judge Pollock. Judge Van Valkenburgh is engaged in Joplin, Missouri, at the term of his own court. He could not come here; and, being disqualified in some cases at St. Louis, and others I did not desire to hear, an application was made to Judge Sanborn for assignment to Judge Pollock to St. Louis court, where he is now engaged in

the trial of cases that have been set down. When the application was made for his assignment there Judge Pollock said that he would be willing to come provided there was an assignment of myself to this District, that there were cases here upon this calendar that ought to be tried, and he said to me that the term of the court at Kansas City, Kansas, was the most important, possibly, that there was in his district. I agreed to come here, and was assigned here. Nothing would suit me personally any better than that I should go back to St. Louis, although very much in love, in so far as I have seen, with Kansas City, still I would like to be in St. Louis.

But, this application made for a delay, does not, in my judgment, show great merit. The fact that there is a case growing out of this transaction pending in the court of appeals, does not persuade me that has anything to do with a criminal prosecution. Civil actions are one thing; criminal actions are another. And while the criminal action has got to be measured by one law, civil suits are measured by others. I do not think the showing is sufficient and I shall overrule it. It is not necessary for me to go into any speculation as to what may or may not be shown on the trial of this case, nor do I propose to refer in any wise as to what counsel said as to what the difficulties are that are liable to arise. I have encountered difficulties all my life, but I have always found it better not to cross a creek until I got to it, and I shall overrule this motion. And in view of this case being on the docket, one or two cases for today, and others for every day this week, this being the first to take up, I shall take it up and then have to reset, probably, some of the cases on the present calendar.

Mr. Hite: We would like an exception, if Your Honor please. And could I ask Your Honor if it might not be arranged that we could take this case up a day later than this, in order to give me some time to get to Topeka and get my papers together before proceeding with the actual trial of it?

2621½ The Court: I don't know; from what counsel have intimated the case had been continued a good deal. I have agreed on Friday, the afternoon of Friday, to sit at Kansas City in a case involving an interstate commerce proposition, I don't know what, where the law requires three judges to be present; and at the earnest solicitation of Judge Van Valkenburgh, saying if Judge Carland would be at Kansas City Friday, I told him that I would sit Friday afternoon at Kansas City, and that night, if it was necessary to get through with the hearing at that place, but the condition of the docket here was such I did not feel I would be justified in holding witnesses and litigants for any length of time. I think whatever is reasonable about the time, we can get along with that, but I think we ought to get a jury and get rid of that much of it.

Mr. Hite: Couldn't you give us until Friday. Today is Wednesday, and we are in the afternoon now, and I submit to Your Honor it would certainly be very gratifying to me.

The Court: What does the District Attorney say about the convenience of the matter. Of course I want to accommodate counsel.

I want a fair trial, if there is to be one before me, and if I can go on, without any great inconvenience to the government, in the trial of the cases on today's docket tomorrow, I might postpone it until Friday.

Mr. Robertson: The government's witnesses are here, Your Honor, been here, came at the time this case was set down for trial, and we are ready for trial. I really don't see any very extenuating circumstances in this case in favor of counsel's requests.

The Court: I don't care to hear that discussed. I will go no further this afternoon than impaneling a jury, and then I will see what we will do about any further delay.

Mr. Robertson: If Your Honor please, there is pending an application to endorse names upon the indictment, which application was also pending in October at Leavenworth but was not called to the attention of the court; a supplemental application to endorse two or three more names than that, and like to have Your Honor's order permitting such endorsement.

The Court: You want leave to endorse on the back of the indictment the names of certain witnesses you intend to use.

Mr. Robertson: Yes sir, under our practice in this District it is necessary to endorse the names of witnesses we expect to use.

Mr. Hite: Your Honor, we would like to have a list of those witnesses; we have not been served with the application for some of the witnesses at least I believe.

Mr. Robertson: You have a list of some of the witnesses at least, Mr. Hite. In addition to that, Your Honor, I want to put a name on the indictment I thought was there, and which the notice contemplates, and that is the clerk of the court. If Your Honor please, it was thought by myself the clerk of the court's name was on the indictment, I see it is not, may have to use him, like to add that name to the list.

The Court: Where the government has names of witnesses not endorsed upon the back of the indictment, never required to endorse the indictment with names of witnesses, but if they ask for it the government can afford to furnish the names of witnesses the plaintiff relies on.

Mr. Hite: I understand now Your Honor they have furnished a list, but I had supposed there were one hundred and five witnesses, have only eighty nine.

Mr. Robertson: I think there are only seventy.

The Court: They will probably melt away from that number before you get through.

Mr. Robertson: They will.

The Court: I don't know of any case where it requires seventy witnesses to try a man, very often, we will see as we go along with that.

The Court: Call a jury into the box.

Names of jurors examined as prospective jurors prior to the time the indictment was read to Mr. Badders.

H. A. Dunn, J. R. Koebele, J. M. Granlee, E. C. Short, E. T. Bryant, Bryce King, Wm. Mohlman, Welden Worrall, Jno. Kelly,

J. H. Carney, C. C. Evans, J. C. Page, W. L. Davis, Fred P. Gaylord, Frank Warner, Jno. Callahan, J. W. Carnahan, Richard Meyer, S. P. Crampton, C. P. Barber.

Court adjourned 4:45 P. M., Wednesday, January 20, 1915.

10:00 O'CLOCK A. M., THURSDAY, January 21, 1915.

Mr. Robertson: If your Honor please, I would call attention to the fact no issue has been joined in this case by plea, there has been no plea.

The Court: I will do that before I swear the jury.

The Court: What plea do you desire to enter in this case? Do you waive the reading of the indictment and desire to enter a plea of not guilty?

Mr. Hite: We have demurred to the indictment in this case and do not desire to plead further.

The Court: Well, then you decline to plead.

Mr. Hite: Yes.

265 The Court: Then a plea of not guilty will be entered by direction of the court.

Mr. Hite: To which defendant excepts.

The Court: Why do you except?

Mr. Hite: We want to save the point, Your Honor, that he has not been arraigned up to this point.

The Court: Let him stand up. Do you desire the indictment read to him.

Mr. Hite: Yes.

The Court: Read it Mr. District Attorney. Read the indictment. (Mr. Robertson reads the indictment.)

The Court: You heard this indictment read: what do you say, guilty or not guilty.

Mr. Hite: Counsel for the defendant, Your Honor, ask that he be not required to plead and declines to plead to the indictment.

The Court: Let a plea of not guilty be entered by this defendant by direction of the court.

Mr. Hite: The defendant objects to any further proceedings in this matter on the ground that before the proceeding by the court for the empaneling of the jury he was not arraigned and no plea was entered.

The Court: The objection is overruled.

Mr. Hite: Defendant excepts.

The Court: Call four men into this box, call four additional jurors, &c.

266 Be it remembered, That at the January 1915 Term of the said District Court of the United States for the District of Kansas, sitting in and for the First Division thereof, and on Thursday, the twenty first day of January, 1915, the above entitled cause came on to be heard before the Honorable David P. Dyer, Judge, and a jury, impaneled and sworn to try said cause.

The plaintiff, the United States of America, appeared by Messrs. Fred Robertson and Francis M. Brady, its attorneys.

The defendant, George S. Badders, appeared in person and by Messrs. D. R. Hite, James H. Harkless and E. D. McKeever, his attorneys.

The Court: You may proceed, Mr. District Attorney, with any statement you desire to make in this case.

Mr. Hite: Your Honor, we ask that the witnesses be excluded during the statements of the case.

The Court: I understand that to be a rule of this District?

Mr. Hite: If desired it is, sir.

The Court: You may call the witnesses and let them retire, or, all witnesses in the case may be called and sworn now and will be excluded from the room during the trial.

Mr. Robertson: The witnesses, Your Honor, are not all in the court room, not all here.

The Court: Call those that are here.

Mr. Robertson: All knowing yourselves to be witnesses for the government in this case stand up.

The Court: Do you ask any rule as to the defendant's witnesses?

Mr. Robertson: If they are going to invoke this rule, Your Honor, we ask that it be applied to all.

The Court: Let it be understood witnesses for both sides are

267 excluded.

Mr. Hite: Certainly Your Honor.

The Court: You may swear each of these persons to testify in this case.

(The Clerk swearing all the witnesses standing in the court room.)

The Court: You may now retire from the court room and remain within call of the court. The Marshal will provide some suitable place.

Mr. Hite: Your Honor, there are one or two or more of the witnesses who are members of the Bar, we do not care to have the rule to apply to them.

The Court: I do not know any special exception unless it is by agreement.

Mr. Hite: Any member of the bar who may happen to be a witness will not be excluded, it has been customary, Mr. Robertson, to always except those.

Mr. Robertson: I am willing that the members of the bar may remain, in so much as counsel has requested it.

Mr. Hite: The defendant's — are willing that that may be done.

The Court: Let that understanding be carried out, and it may be the rule. The rule is, you agree that certain men, officers of this court, lawyers, may not be excluded if they want to stay in.

Mr. Robertson: I understand that applies to any lawyer.

Mr. Hite: Yes, or member of the bar of this court.

Mr. Robertson: Or any other court in this country, I understand.

Mr. Hite: Don't make any difference at all, if he is a lawyer.

Mr. Robertson: I speak of that, gentlemen, because there is a gentleman here from Chicago, a lawyer, who is one of our witnesses.

Mr. Hite: No distinction attempted at all on our part.

The Court: That is, as to lawyers; the court knows no distinc-



tion in favor of them; it has got to be an agreement between counsel as to whether they stay in or not; I take it for granted you understand each other.

Mr. Robertson: I think so your honor.

The Court: Proceed with your statement.

268 Mr. Robertson: There is another matter I want to call to your Honor's attention, so if Your Honor shall make the order, so the Marshal may know of it; that is, in regard to the care of the jury from this time on; like to have them segregated and kept together.

The Court: The court recognizes that as a proper motion and the court will now announce that this jury will be in charge of the Marshal and his deputies until the conclusion of the case, and the Marshal may make such arrangements to that end as may be necessary to provide for the comfort of this jury. That order will be entered. Go on with your case.

Thereupon, Mr. Robertson, of counsel for the plaintiff, made to the jury a statement of the case on behalf of the said plaintiff:

Thereupon, Mr. Hite, of counsel for the defendant, made to the jury a statement of the case on behalf of the said defendant.

The Court: Gentlemen of the jury, I regret that a matter has come up at Kansas City, Missouri, in court there tomorrow, that will require my attendance. And I may say to you that at recess a few moments ago I was called up by Judge Van Valkenburgh, who is the Judge of that District Court in Missouri, saying that a matter affecting some property, that required three judges to sit in the case, would come up there tomorrow. That Judge Carland, one of the Circuit Judges, would be in attendance; that he himself would be there; and at the instance of Judge Sanborn who is the presiding judge of this Circuit, I was selected to sit with these two in the hearing of this particular case over there. I cannot be in both places at the same time, and in as much as I regret the loss here of tomorrow's work in this case, I feel that it is my duty to obey the request of my superior, and I shall be in attendance there tomorrow, and resume the trial of this case Saturday morning, at which time the testimony will begin.

269 You are in the charge of the Marshal of this District. He is required to furnish you the best accommodations that can be had in this town, and they will be furnished, I have no doubt, by him, and that as far as your comfort is concerned, everything will be provided for your comfort. You will be properly housed, and I hope suitably fed, and I have no doubt, although the delay is a little irksome, it will be as pleasant as under the circumstances it can be.

I want to warn you about talking about this case. Do not talk among yourselves about it until you hear the whole case, hear the testimony in the case, and hear the charge of the court as to the law of the case, and then you will be prepared to put your heads together, so to speak, to arrive at a fair verdict in the case. Many men are disposed to reach hasty conclusions, to make up their minds without hearing all the testimony, and then stubbornly refuse to hear

what their fellows, as jurors, may have to say. The right way is to hear all the testimony, be in condition to discuss it in your jury room fairly with your brothers, and in that way we generally reach just verdicts and just conclusions. Sometimes you will find a man on the jury, some juror, who thinks he is smarter than all the eleven others, and he takes a position and refuses to move. The right way to do is to hold your minds perfectly free; hear all that is to be said on either side; listen to the testimony; hear the court's charge, and then go to your jury room and honestly and fairly deliberate, one with the other, as to what you think about it. Of course there will be no opportunity furnished you for conversations with any one; you will be in charge of the Marshal, or some of his deputies from now until Saturday morning, but I only warn you against these hasty, speedy conclusions that are sometimes reached by jurors without a full and fair consideration of all the facts. I make that announcement—and I may also say that I do this for another reason, although the one that I have given is a paramount reason. Counsel have asked for a little time to make preparation for their trial. I am always disposed to do what I can to aid them in getting the

270 facts that are necessary to be presented, and the only requirement that I make of them is, that they will not delay the trial by unnecessary and captious objections and statements. What we want is the facts, and we want them as speedily as we can get them, and as fairly as we can get them. You will be in the custody of the Marshal.

A Juror: One moment, I would like to make a request. Some of our personal belongings are at our hotel and we cannot be conveniently accommodated without those belongings.

The Court: Send out and get them. The Marshal will get these belongings.

A Juror: By being accompanied by a marshal?

The Court: Oh yes, go and get your things.

The Court: Adjourn court until quarter past nine o'clock tomorrow morning. (Friday, January 22, 1915.)

(SATURDAY, January 23, 1915—ten o'clock a. m.)

The Court: Proceed with the introduction of testimony in this case Mr. District Attorney.

Mr. Robertson: I call Mr. George A. Clark.

GEORGE A. CLARK, called as a witness on behalf of the plaintiff, having been first duly sworn, testifies, as follows:

Direct examination.

Questions by Mr. Robertson:

Q. What is your name?

A. George A. Clark.

Q. Where do you reside Mr. Clark?

A. Topeka, Kansas.

Q. What position, if any, do you hold under authority of this court?

A. Receiver of the Badders Clothing Company.

Q. The corporation the Badders Clothing Company?

A. I think so, yes sir.

271 Q. I will ask you whether or not that is in connection with a proceeding in bankruptcy against that corporation.

A. I think so.

Q. Yes sir. When did you qualify as such officer Mr. Clark?

Mr. Hite: Object to this as not material, Your Honor, whether Mr. Clark is receiver.

The Court: Answer.

Mr. Hite: Except.

A. I think it was on the 30th of January, 1914.

Q. When did you take charge of the Badders Clothing Company as said receiver?

A. That day.

Q. When you took charge I will ask you whether you found all the books and records of the Badders Clothing Company there?

A. I don't know what books and records they had; I don't know how many were missing or whether all there or not.

Q. Where was the Badders Clothing Company operated?

A. Corner seventh and Kansas Avenue, southwest corner, 703, I think.

Q. How long a building?

A. I suppose fifty feet by one hundred and fifty deep.

Q. To whom, if you know, does the building belong?

A. Knights and Ladies of Security, so I understand.

Q. Tell the jury briefly what you did relative to this, to the Badders Clothing Company and its affairs when you became receiver?

A. I went up there in connection with my Attorney, Mr. A. M. Harvey and took charge of the contents of the building, the stock, fixtures and what I found in that room.

Q. Did you find certain papers and books there which apparently had theretofore been used in connection with the conduct of the business of the Badders Clothing Company?

A. Yes sir, I found the ledger, the stock book and the bank pass book.

Q. Did you find any check books, bank check books, bank stub check books?

272 A. Oh probably a few of old date.

Q. Did you find any stub check books of the company for the months of November and December 1912 and January—November and December 1913 and January 1914?

A. I think not.

Q. Did you find any cash book for that period?

A. Never found any cash book at all.

Q. Did you find any journal of any sort for that period?

A. No.

Q. Did you find any cashiers' slips, loose leaf slips, that were kept there in the conduct of that business?

A. Found a whole box of them down in the stock room in the basement.

Q. Did they cover and apply to that period I have mentioned, to wit, November and December 1913, and January 1914?

Mr. Hite: We think this is not the best evidence Your Honor.

The Court: They are asking him what was there? Answer.

Mr. Hite: Except.

A. I put them on the adding machine and they balanced up almost exactly with the purported sales.

Q. You don't get my question Mr. Clark? You know who Mrs. Ira Burdick is?

A. Yes.

Q. And I take it that you understood and knew that she had been handling the cash and was cashier of the Badders Clothing Company? Did you find her cash slips for the month of November and December 1913 and January 1914?

A. Yes sir I found them.

Q. Now did you find the bank book for that period of time?

A. I found the bank book and there were no deposits in it with the exception of one or two after November; there were no December deposits, no January deposits, as I recollect, might have been one or two.

Q. What bank does that book belong to?

A. Bank of Topeka.

Q. Now Mr. Clark what did you find there beside these things that you have spoken of, in the nature of papers or records of this company?

A. I found quite a package of bills, accounts due eastern editors and also some local creditors, I found some letters there on eastern concerns.

Q. What did you do with all these things, if anything?

A. After the sale I packed them up, took them down to my place business, and got two big dry goods boxes and nailed them up in them.

Q. Who, if any one, assisted you in the gathering of this stuff together and the packing of it?

A. No one assisted me in the packing of it; Mr. Badders assisted in the selection of it.

Q. Mr. Badders, the defendant in this case?

A. Yes sir.

Q. And the stuff which he selected is the stuff which you put in boxes is it?

A. Yes sir.

Q. Can you give the jury any idea of about when it was you did

A. It was either the afternoon of the day the sale was made or the day, I don't remember the exact date of the sale, the sale of the stock of goods by auction.

Q. That was prior to the returning of the indictment in this case, was it not.

A. I think so, yes sir.

Q. I will ask you whether you were advised day before yesterday by me that the court desired you to bring, and that I desired you to bring all these papers and these boxes that you speak of to Kansas City?

A. I was called to the telephone about eleven o'clock Thursday night by the Western Union and they repeated a telegram from you, advising that the court had made such order.

Q. And did you know that such a request had also been made here in open court by Mr. Hite acting for the defendant?

A. No sir, the first knowledge I had of it was the receipt of your telegram.

274 Q. After you got that telegram what did you do?

A. Friday morning, at eight o'clock, I went down and got the key from Mr. Stickle who had business next door and went in to make arrangements to comply with the court's instruction to ship the boxes down.

Q. Did you get the boxes?

A. No sir, they were gone.

Q. They were gone? Do you know where they went?

A. I do not.

Q. Have you since made endeavors to locate them?

A. Yes sir.

Q. With what success?

A. No success.

Q. Do you know when those boxes disappeared from your building?

A. No sir I don't know the date of that.

Q. You explain to the jury where your present office is Mr. Clark and where this building is that you had these boxes in?

A. At the time I moved these records my office at that time, abstract office, was just across the alley in the rear of the New England Building; I don't remember what number it is, I think it is one hundred or one hundred and three, something like that. It was a building facing north on Fifth Street; afterwards I bought the other two abstract offices, consolidated them, I made the purchase the first of June, and then moved my office, together with these other two offices, the first of July into the New England Building just across the alley from where my old office was located. There was considerable furniture, desk, chairs and things of that kind, and stuff that we didn't have any room for, and we made arrangements to keep that stored in this building that we were vacating. The boxes were left there. And yesterday morning when I went over there to get the boxes to ship them down here, I found that they were gone but nothing else had been disturbed at all in the rooms of the building.

Q. Were the doors open or unlocked, any of them, to the building?

275 A. None of them.

Q. Have you in your possession or under your control any of the things that were in those boxes?

A. None whatever.

Q. As I understand you the stock book of the company was in those boxes?

A. Yes sir.

Q. What does the stock book show, if you know?

A. The cost mark.

Mr. Hite: We think this is not competent, Your Honor, as to what the stock book shows.

The Court: Did you see the stock book?

A. Yes.

The Court: Overruled.

Mr. Hite: Exception.

A. The stock book showed the quantity of various articles in the stock, together with the original cost mark paid for same back at the manufacturers or of the wholesalers.

Mr. Hite: We ask the testimony of the witness be stricken out as incompetent, because it is hearsay, secondary evidence.

The Court: Overruled.

Mr. Hite: Except.

Q. I will ask you to state if you know whether this stock book would show approximately the amount of merchandise on hand in that store?

Mr. Hite: Defendant makes the same objection embodied in the previous motion, that the question calls for incompetent, hearsay and secondary testimony.

The Court: Answer.

Mr. Hite: Except.

A. You could arrive at the quantity of goods in the stock by taking the cost mark and going over it, I don't know as the book would show it only by that deduction.

Q. Would it not show it in conjunction with other books and records that were available or should be available and were used in the conduct of the business?

276 Mr. Hite: To which the defendant objects as calling for the conclusion of the witness.

The Court: If you have examined the other books in connection with this, answer the question.

Mr. Hite: Except.

A. They show it.

Mr. Robertson: It may be necessary to recall Mr. Clark very briefly on another matter apart from this.

Cross-examination.

Questions by Mr. Hite:

Q. Mr. Clark I understand that you found a stock of merchandise in this store room when you went up there on January 30, 1914?

A. Yes sir.

Q. You also found some cash, did you not?

A. Yes sir.

Q. Afterwards that stock of merchandise was sold, was it not.

A. Yes sir.

Q. And the proceeds of that sale were turned over to you?

A. Yes sir.

Q. Now in your possession?

A. Yes sir.

Q. Where are the proceeds of the sale?

A. In the banks in Topeka, the Topeka State Bank, the Central National Bank, and the Merchants National Bank.

Q. I understand you to say that you don't know of your own knowledge Mr. Clark what books were kept by the Badders Clothing Company, is that true?

A. All I know is what books I found there, I don't know how many books they had or anything about it.

Q. Now did you have some one employed to assist you in matters connected with your receivership?

A. Yes sir.

Q. Who were those persons?

A. Richard L. Thomas, was the accountant in the matter, and I employed at the time I took the inventory Mr. Ira Burdick,  
277 C. C. Coulson, Charles Fig and Mr. Boyd for a few days.

Q. How much of a search did you make of the contents of that store personally for books and papers?

A. Very thorough search.

Q. You did that personally?

A. Yes sir.

Q. Was that thorough search made when you first went in Mr. Clark?

A. All the time, there wasn't hardly a day there I wasn't searching for something.

Q. Whereabouts did you search?

A. Searched in the safe, in the desks and the drawers of the desks and the vaults?

Q. How many vaults are there?

A. There is one vault on the main floor.

Q. How often did you search that vault for books and papers and other articles?

A. I had access to the vault almost every day.

Q. This sale took place in April, did it not Mr. Clark, of 1914?

A. I think it was in April, I don't remember the date exactly.

Q. After that sale, did you find any money in the vault of the store?

A. Yes sir.

Q. How much money did you find after this sale?

A. A hundred and twelve, thirteen or fourteen dollars.

Q. And that money you had overlooked from January to April, had you?

A. Yes sir.

Q. That money was in the vault that you speak of, was it?

A. I found it there, yes sir.



- Q. Was it behind some books and papers?  
 A. Behind a whole lot of old freight bills, bound freight bills.  
 Q. And during the period from January 30th until the latter part of April, notwithstanding all of your searches, you hadn't found this money?  
 278 A. Had not found it.  
 Q. Who was your attorney as receiver?  
 A. A. M. Harvey.  
 Q. Is Mr. Harvey related to the second assistant United States Attorney? If you know?  
 A. I think they are brothers.  
 Q. After you took charge as receiver were you in communication with the United States Attorney's office?  
 A. Never.  
 Q. Not at any time?  
 A. Not at any time.  
 Q. Reverting to this vault, Mr. Clark, please give the jury some idea of the size of the vault?  
 A. Well I would judge that it was a vault that was six by seven feet, something like that.  
 Q. Have an electric light bulb in it?  
 A. I think it did yes.  
 Q. And you say that you had been in that vault almost every day from January 30th to April?  
 A. Yes.  
 Q. Do you know whether or not any postoffice inspectors had access to the books and papers that came into your possession?  
 A. No I do not.  
 Q. Did any postoffice inspector ever come up to the store where you were in charge?  
 A. Not to my knowledge.  
 Q. Well you weren't there all the time were you Mr. Clark?  
 A. Pretty much all the time.  
 Q. Well how much of each day would you say you were there from January 30th to the latter part of April?  
 A. Oh seven or eight hours each day.  
 Q. Seven or eight hours each day?  
 A. Yes I should judge that.  
 Q. How long did you have Mr. Thomas in your employ?  
 A. Different times until after the sale was made.  
 Q. Are you acquainted with W. S. McClintock in Topeka?  
 A. Yes sir.  
 Q. What is his business.  
 Mr. Robertson: Objected to as not cross examination, immaterial.  
 Mr. Hite: Merely preliminary, Your Honor.  
 The Court: Preliminary to what?  
 Mr. Hite: To asking him whether Mr. McClintock has had any access to these papers.  
 The Court: Ask him direct.  
 A. He is a lawyer.

Q. State whether or not Mr. McClintock has had access to these papers that came into your possession as receiver?

A. I think that he has had access to them, he was up there and was looking over matters.

Q. How often was he up there looking over matters?

A. Possibly two or three times.

Q. Are you acquainted with Mr. Quant, Mr. McClintock's partner?

A. Yes sir.

Q. Was he up there any time?

A. Two or three times.

Q. Did he have access to these papers?

A. Yes sir.

Q. Did you at any time Mr. Clark furnish to Mr. McClintock or Mr. Quant any information from these books and papers that you had?

A. Gave them any information that was in my possession that they asked for.

Q. Why did you do that?

A. They were representing the creditors.

Q. Sir?

A. I understand they were representing the creditors and I was anxious to make a good settlement with them if it came to that.

Q. Then you were anxious to make a good settlement with McClintock & Quant as possible if it came to that?

A. Yes.

Q. After this sale Mr. Clark you say you packed these books  
280 and papers and articles of various kinds that were left after the sale in some dry goods cases?

A. Yes sir.

Q. How did you come to do that?

A. To preserve them.

Q. At whose request?

A. I think it was at your request Mr. Hite.

Q. As attorney for the defendant?

A. Yes sir.

Q. Now you had those papers taken from Seventh and Kansas Avenue to some place on Fifth Street, didn't you?

A. Yes sir.

Q. That would be north from Seventh and Kansas Avenue, two blocks, would it not?

A. A little over two blocks.

Q. And west about a half a block, Mr. Clark?

A. About a half a block.

Q. And that you say is a place occupied by a man by the name of Stickle?

A. No sir.

Q. I misunderstood you then; who occupied the place?

A. I occupied the place up to the first of July with my abstract office.

Q. And you had these papers taken up there and put in your abstract office?

A. Put in the back room of the abstract office.

Q. Wasn't there a vault there?

A. I was using the vault for my abstract books.

Q. There was a vault there?

A. Yes a small vault.

Q. You selected this place in which to store these boxes yourself, did you not?

A. I did.

Q. No suggestion from any one as to where you should put them Mr. Clark?

A. None whatever.

281 Q. And you say there was a vault in the building?

A. Yes sir.

Q. At the time that you packed these books up were you advised that the defendant in this case specially wanted them preserved so that he might have the use of them?

A. Nothing was said about the use of them, you made the request that they be preserved.

Q. How often did you see those papers after they were taken or the cases in which they were contained, after they were taken from the Badders Clothing Company's store to this building on Fifth Street where you had your office?

A. I cannot state how often I saw them, I have no recollection of that matter.

Q. What precautions, if any, did you take, Mr. Clark, to preserve those cases containing these papers?

A. I stored them in that building.

Q. Well what did you do with them by way of storing them, just put them in some corner?

A. That is all.

Q. How large were the cases?

A. They were some three feet to three feet and a half high by, in width they would just barely go through an ordinary door, and in length I should say they were three feet, three and a half feet.

Q. Both of them about the same size.

A. Just about the same size.

Q. And they were filled with books and papers relating to the Badders Clothing Company's business, is that the fact?

A. All the papers and books and everything of that kind I found up there except the ledger and the bank book.

Q. How did you happen to keep the ledger and the bank book out?

A. Well I needed the bank book and the ledger was an exhibit in the bankruptcy proceedings and was taken over and filed as an exhibit in the bankruptcy proceedings.

Q. Were you requested by anybody to leave those two articles out?

A. No.

282 Q. You say you needed the bank book, what did you need the bank book for?

A. I needed that with the data that I had made of the entire transaction of the business.

Q. What data had you made of the entire transaction and business?

A. The inventory, the sale.

Q. Wasn't this bank book also an exhibit in another matter?

A. I don't remember Mr. Hite whether the bank book was, whether the pass book was or not.

Q. I understand you to say Mr. Clark you moved away from this place of business on Fifth Street some time in July?

A. First of July.

Q. Of 1914?

A. 1914.

Q. Then where did you go?

A. To the New England Building just across the alley.

Q. That would be east and on the corner of Fifth and Kansas Avenue?

A. East.

Q. Did the rooms that you took in the New England Building have a vault in them?

A. Yes sir.

Q. More than one?

A. No sir.

Q. Aren't there a number of storage vaults in that building Mr. Clark?

A. I don't know.

Q. Have you ever inquired?

A. Never have.

Q. That is a new modern office building in Topeka, is it not?

A. Yes sir.

Q. Did you see these boxes containing these books and papers in your office when you moved into the New England Bldg.?

A. Yes sir.

Q. Now when you left your old office I understood you to say you left these boxes there?

A. Yes sir.

283 Q. Did you leave them in charge of anybody?

A. No sir.

Q. Who had access to them?

A. I had access to them whenever I wanted to.

Q. Well did you go and look at them at any time?

A. I was in and out of the building at different times, looking over the furniture and fixtures and things we had left there.

Q. Did you have these cases open at any time?

A. Never.

Q. Now Mr. Clark why didn't you move those cases into the New England Building?

A. I didn't think they were of sufficient importance to move anywhere, nothing but a whole lot of old junk in it.

Q. There was a mass of correspondence in those cases, was there not?

A. Little package of letters about that thick.

Q. That is, if laid on the table they would stack up five or six inches?

A. Two, three or four inches.

Q. Three or four inches high?

A. Three or four inches high.

Q. There was also a large number of slips of sales, were there not?

A. None whatever.

Q. None whatever?

A. No.

Q. There were some books in these boxes were there not?

A. Invoice books.

Q. Invoice books. Those books contained invoices sent to the Badders Clothing Company from eastern creditors, did they not?

A. No; I don't understand that question Mr. Hite.

Q. Well how many of those books were there?

A. Oh probably four or five, three or four, I don't recall just how many there were.

Q. There were a lot of invoices from eastern creditors in those cases, were there not?

284 A. I had a little package about that thick of bills of accounts due eastern creditors in one of those cases.

Q. In one of those cases; and there were a lot of other books of various kinds, were there not Mr. Clark?

A. No other books that I know of.

Q. No other books that you know of except these invoice books?

A. No.

Q. Did you personally pack these articles in these cases?

A. Personally, yes sir, I did.

Q. Who helped you?

A. Nobody.

Q. You personally then took each article and put it in the cases?

A. Yes.

Q. What else was there in the cases beside these invoice books, letters and bills for eastern creditors?

A. Freight bills, dating back to 1905 I think, which went back that far; old freight bills of Robinson and Marshall that were put up in form on a patent binder; there must have been of those things, there must have been twenty five or thirty of those immense books, might call them books, I don't know what you would call them.

Q. You say Mr. Clark that these papers that you have reference to as being in those cases were pointed out to you by the defendant?

A. Many of them, yes.

Q. Many of them; and those that he pointed out you put into these cases?

A. Yes sir.

Q. Did he say anything to you when he was pointing these out?

A. Just simply, I would refer to the matter, and I would say, "You want these taken?" He would say, "Yes," and I would take it.

Q. And when he would say that you put these bunches of papers into the cases?

A. Yes sir.

285 Q. You didn't go through these packages of papers paper by paper, did you?

A. Oh no.

Q. When after you moved into your present office did you see

these cases; give me a date, Mr. Clark, please, if your memory will permit?

A. I don't recall, I couldn't fix any date.

Q. Is your present office Mr. Clark on the first floor of the New England Bldg.?

A. In the basement.

Q. And about how many steps is it from your present office to the office that you left on the first of July?

A. Wall to wall, I would say twenty feet, it was just across the alley.

Q. So you may come out of your office in the New England Building and a few steps and you are in your old office?

A. Yes sir.

Q. Was anybody occupying that old office after you left it?

A. No one at all, except we were using it as a store room.

Q. And you had the key?

A. Had one of them, yes.

Q. Who had the other key?

A. Stickle.

Q. Now these two cases containing these books and papers were left, as I understand it, in the old office?

A. Yes sir.

Q. Which nobody occupied at all, after you left it in July to move into the New England Bldg.; that correct Mr. Clark?

A. Except as a storage house for the things we had in there.

Q. Well no one occupied it, except you, you were the tenant still of that building and that room?

A. Yes.

Q. And you say you are unable to state now any particular time when you saw those cases after the first of July up to the time that you looked for them yesterday?

A. Don't recall, I couldn't fix any date.

286 Q. Mr. Clark, did you know of the fact that the defendant in this case had applied to the court for a postponement of the trial because he desired to have access to those papers; did you know of that circumstance?

A. Not until my attention was called to it.

Q. Now your attention was called to that circumstance about two weeks ago wasn't it?

A. I think it was the Sunday before the opening of court down here at Kansas City, Kansas.

Mr. Robertson: I submit Your Honor that all counsel is stating is a statement of affairs which is not true, which does not appear from any record in this case. I think Your Honor well remembers that counsel tried to get a continuance in this case because he claimed Mr. Clark had deprived them of the privilege of seeing these papers, that was the ground of his application.

The Court: Well let him go on.

Mr. Robertson: I object because it is assuming a state of facts not shown.

The Court: Let him ask the question as to whether he did or not.

Mr. Hite:

Q. I understand you know of that circumstance, Mr. Clark, of the defendant applying for a postponement of the time of trial in order that he might have access to these letters and correspondence and papers in these cases?

A. My attention was called to it Monday and I also saw a piece in the paper to the effect they had asked for a continuance, and I think they published an extract from the petition.

Q. Didn't the United States Attorney have some conversation with you about it?

A. On Sunday, yes.

Q. That was the Sunday before this court convened?

A. I think it was the Sunday before this court convened.

Q. Now to refresh your recollection Mr. Clark, I will advise you the first day of the term of this court was on January 11th, Monday, January 11th, am I not right Mr. Robertson?

A. I think it will be two weeks tomorrow since that matter was called to my attention.

287 Q. Now your attention was called to the fact again that the defendant wanted access to those books and papers did you go to see whether they were there or not?

A. No sir.

Q. Didn't do anything about it at all, did you?

A. No sir.

Q. Did Mr. McClintock or Mr. Quant have access to those cases?

A. No sir.

Q. Did any postoffice inspectors have access to that room or those cases?

A. No, sir.

Q. Now you say that you had a package of invoices there, what did you do with those, did those go into those cases too?

A. They went into those cases.

Q. Now those invoices, Mr. Clark, would show the condition of the stock of the Badders Clothing Company at various intervals, would it not, the amount of stock in the store?

A. Less sales.

Q. Less sales, and you say that there must have been five or six books of that character, is that right?

A. No, you are talking about one thing and I am thinking about another I guess, Mr. Hite; those invoices that I have referred to, or bills or accounts, were on bill heads, and showed the condition of the accounts that he owed manufacturers and clothing people that he was dealing with. Now these books with the private cost mark of the various goods or things entered in that stock that he had bought from time to time, they put a cost mark on it so they can tell what each item that is brought into the house cost them, that is what these cost books were; they were books there that he had me save, they were handed down from Robinson & Marshall when they began business, and he had used those cost books right on down.

Q. I didn't ask you that Mr. Clark?

A. Sir?



Q. I didn't ask you about that?

288 A. If there is anything about this you want to know, if I can tell you, I want to tell you.

Q. What did you do Mr. Clark with the letter files?

A. Boxed them up in those boxes, there were two or three of those that had some few letters in them?

Q. You say had some few letters in them?

A. Yes sir.

Q. What became of the other letters?

A. All that I found were preserved and put in these boxes.

Q. And how many letter files were there?

A. I think two or three.

Q. Two or three?

A. That is my recollection.

Q. That is all you found there?

A. I think so.

Q. What did you do with the sale slips that you say you found there?

A. My recollection of those sale slips is that I packed them in those boxes yet I wouldn't say definitely whether I took them with me or not.

Q. Where are they now?

A. That I don't know.

Q. They came into your possession on January 30, 1914, did they not?

A. They were in the basement of the store building when I took charge.

Q. And you say you don't know what became of them?

A. My recollection is I packed them in the boxes and they have disappeared with the boxes.

Q. You are not positive about that?

A. No I am not positive about that.

Q. But if not in those boxes you don't know where they are?

A. No.

Q. Did you leave anything up at the Badders Clothing Company store building?

A. Not that I remember of.

Q. Now you say you moved from this place July first into the new building and there was a vault in that new building?

289 A. Yes sir.

Q. What did you do with the vault in that old building?

A. Left it there.

Q. Was it empty?

A. Yes sir.

Q. Why didn't you put these cases in there?

A. I didn't think they were of sufficient importance to lock up.

Q. And yet Mr. Clark the defendant had asked you to preserve those papers, had he not?

A. No sir, the defendant had not asked me to preserve any papers.

Q. His counsel had?

A. His counsel had.

Q. These cases in this store room as you call it where you formerly had your business were accessible to anybody that could get into the room, were they not?

A. They were nailed up.

Q. Well you don't know whether they remained nailed up after you put them in there in April.

A. They were nailed up up to the last time I remember of seeing them, and I don't remember when that was, the last time I saw them they were nailed up.

Q. You don't know when you saw them last?

A. Couldn't give the date.

Q. Might have been the day you put them there?

A. They were there when we moved out.

Q. For aught you know Mr. Clark those papers may have been taken out of those boxes within two weeks after you sent them down there, is that true?

A. Might have been taken out and nailed up. I never inspected them.

Q. There was plenty of room in this vault in your place on Fifth Street to keep these cases was there not?

A. After we moved out?

Q. Yes sir.

A. O yes the vault is empty now.

Q. Now you say the first you heard of the order made by this court that you produce these papers here was Thursday Mr. Clark,  
290 day before yesterday?

A. That is the first I heard it yes sir.

Q. Well when you got that order or learned of its having been made what did you do?

A. I proceeded down to the storage room on Friday morning at eight o'clock prepared to ship those boxes down here.

Q. Well what else did you do?

A. I immediately got busy, I found they had been stolen, and I immediately got busy to see if I could find out where they were. I called up Mr. Robinson by long distance phone and apprised him of the fact, and commenced to try to investigate and find out if I could locate where those boxes were or who stole them.

Q. Well, what investigation did you make?

A. I inquired of the Western Union boys who run in and out of the alley all the time delivering messages if they had seen anybody take anything out of that store room. I asked Mr. Stickle, and I asked Mr. Beal who was there all the time, our office man, I asked him if he had noticed any drays come up there and take anything away.

Q. Well did you continue that search for those cases all of Thursday?

A. Pretty much, pretty busy all day long.

Q. And all of Friday?

A. No, not Thursday, all of yesterday was all the time I knew anything about it.

Q. So from yesterday morning that is the search you have made for them?

A. Yes.

Q. Did you call on Mr. Robertson and the government employees to assist in this matter?

A. I notified Mr. Robertson over the phone that the cases had been stolen.

Q. Well did you have a talk with him about having post office inspectors look the matter up?

A. No I didn't.

Q. Did you make any inquiry of Mr. McClintock or Mr. Quant about them?

291 A. Never seen them.

Q. Did you ask Major Harvey your attorney?

A. No.

Q. Why didn't you do that Mr. Clark?

A. Didn't occur to me.

Q. So that all the search that you have made is to ask your associates in business, and the Western Union Telegraph boys, and call up Mr. Robertson, is that all?

A. Queried a few transfer men.

Q. You didn't ask your attorney anything about them?

A. No sir.

Q. You didn't ask McClintock and Quant anything about them?

A. I did talk to Major Harvey last night about them.

Q. That was the first thing you said to him about it?

A. Last night.

Q. You didn't inquire of petitioning creditors' attorneys anything about them at all.

A. No sir.

Q. Did you talk with Mr. Stickle?

A. Yes I talked with Mr. Stickle, got him and went in there with him.

Q. Anything else taken out of the store?

A. Not a thing.

Q. Nothing but these two packing cases?

A. Just those two packing cases.

Q. And do you say Mr. Clark you do not know where these things are that were intrusted to your care as receiver?

A. No, I wish I did Mr. Hite.

Q. Hasn't a real estate agent had access to that place since you moved out?

A. Oh I think there are two or three of them got it for rent, I don't know whether ever shown it to any one or not.

Q. Did you ask them anything about these packing cases?

A. No.

Q. Have they keys?

A. No.

292 Q. How do they get into the room?

A. Get the key from Mr. Stickle next door.

Q. So Mr. Stickles has had the key all the time.

A. All the time.

Q. And you don't know whether Mr. Stickle has not given the key to McClintock and Quant, do you?

A. I don't.

Q. You know of any other key besides the one Mr. Stickle has?

A. None whatever except the one we have in our own office and the one Mr. Stickle had.

Q. Whereabouts in your office is that key kept?

A. In my desk.

Q. In your desk?

A. Yes sir.

Q. Was it there when you learned about this order yesterday morning?

A. I used that key to get into the building yesterday morning.

Q. Where is that key now Mr. Clark?

A. It is in my desk.

Q. Mr. Clark didn't Mr. Badders ask you if these books and papers were kept in a fire proof place?

A. He never did.

Q. He never did?

A. He never did.

Q. Never anything of that kind?

A. Never had any conversation with Mr. Badders after we selected what should go down there.

Q. During that conversation was there anything said about storing these articles in a fire proof vault?

A. Not a word.

Q. Not a thing of that kind?

A. Not a thing of that kind that I remember of.

Q. Mr. Badders didn't make that request of you personally, and you didn't make that statement to him?

A. No sir.

Q. Not at that or any other place?

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A. Not at that or any other place.

Q. Now afterwards, after these books and papers were sent down there to this place on Fifth Street, did you not inform Mr. Badders that they were in a vault?

A. No sir, never.

Q. You did not?

A. No sir.

Q. Nothing of that character?

A. Not a thing on earth of that character.

Redirect examination.

Questions by Mr. Robertson:

Q. You say you found one hundred and twelve or fourteen dollars in cash in the vault?

A. I think it was one hundred and thirteen dollars and sixteen cents.

Q. What did it consist of?

A. All silver except I think there was one five dollar gold piece and one copper cent.

Q. How did you come to find it?

A. Found it when Mr. Badders and I were taking out the stuff he wanted saved.

Q. Searching in the old papers and rubbish?

A. Searching in the old papers and rubbish and this was away back in behind a whole lot of junk, he was present when I found it.

Q. Now Mr. Clark after these papers had been boxed up, or before, did you discover that certain books and records were missing from this Badders Company?

Mr. Hite: We object to this unless the witness knows of his own knowledge of books that were there before; the witness has testified to the effect he didn't know what books were there before, and any knowledge he may have obtained from others would be hearsay.

The Court: Answer if you know it to be your own knowledge.

A. I don't know anything about what books they used other than those I found there.

Mr. Robertson: We will supply all the deficiencies here on 294 this, Your Honor, with other witnesses.

Q. Did you later make a demand on Mr. Badders for certain books, papers and records of this Badders Company?

A. Made that demand in writing, yes sir.

Q. And what was the response Mr. Clark?

Mr. Hite: Your Honor, we object to the answer of the witness and ask that any further questions with reference to the demand be postponed until the writing is produced.

Mr. Robertson: Hand me the writing.

Q. This Badders Company was declared bankrupt later, was it, or was it not.

Mr. Hite: Objected to as incompetent, irrelevant and immaterial.

The Court: Better conclude what you said before, if you have anything there better produce it.

Q. Did you investigate into the affairs of this corporation to try to learn its condition?

A. Made a thorough examination.

Mr. Hite: Objected to as immaterial, not within the issues of this case.

The Court: Answer.

Mr. Hite: Except.

A. Made a thorough examination.

Q. Did you in making this examination try to get the defendant Badders to help you in any matters?

Mr. Hite: Objected to as incompetent, calling for a conclusion of the witness.

The Court: You may state what conversation you had, if any, with this defendant with reference to investigations you were making.

Mr. Robertson:

Q. Tell the jury that.

A. The day that I went there to take charge Major Harvey, my attorney was with me, and when we went in I saw Mr. Badders, and I regretted the condition he was in and hoped I could render him some assistance, and that we could shape matters up so that he would overcome his troubles, and I told him I wanted to do  
295 everything that I could to help him, and I hoped that he would join with me and render me all the assistance in his power that we might reach that end. He gave me the combination on the safe, told me the bank book was in there, put on his hat and left the store, as I remember it.

Q. Did you ever after that get any help from him?

A. Never got any help from him.

Q. Was this building in which you kept these boxes near Mr. Stickle's place locked?

A. Always locked, yes sir.

Q. Who is Mr. Stickle?

A. He is an upholsterer dealer there in Topeka.

Q. An old gentleman?

A. Gentleman I would say fifty years of age.

Q. You are well acquainted with him?

A. Known him for thirty years.

Q. Lived that time in Topeka has he?

A. Part of the time and rest of the time at Abilene, Kansas.

Q. Mr. Clark, counsel speaks to you about court opening here on the 11th day of January; state if you know what day this case was set down for trial?

A. I think it was last Tuesday.

Q. Tuesday of this week?

A. That would be the 19th.

Q. In the cross examination a moment ago you spoke of certain letters being found there in the business of the Badders Clothing Company and put in these boxes in question; did you find the letters and correspondence of the Badders Clothing Company for the period covering the sale that was held there in December of 1913 and the following days?

Mr. Hite: If the witness knows, your Honor.

The Court: Well, do you, if you know, say so; if not——

A. I don't know whether I did or not.

Mr. Robertson:

Q. You don't know whether they were there or not?

A. No.

Q. I understood you to say the cash slips were not there.

A. Oh yes, I said the cash slips were there for that special sale.

Q. What did you mean by the remark the cash slips were not there, or did you mean to state that?

A. I didn't say that, if I did I didn't mean that.

Q. I thought you said that.

A. No, I found the cash slips for that sale in the basement store room.

Q. Has the defendant Badders or his counsel ever upon any occasion been refused access to anything that you had there in these boxes or otherwise belonging to the Badders Clothing Company?

A. Not by me.

Q. I hand you a paper marked Exhibit No. 1 Mr. Clark and ask you if that is the demand you spoke of a while ago as having been made in writing?

A. This is a copy of the demand I made, the other is on file in the bankruptcy case.

Mr. Robertson: We offer in evidence Exhibit No. 1.

Mr. Hite: We object to it as incompetent, not tending to establish any issue in the case, has no bearing upon any matter that is here.

The Court: That the only objection?

Mr. Hite: And that it is secondary evidence, of course, included in our objection of incompetency.

The Court: Object to it on the ground the original is not here?

Mr. Hite: Yes sir.

The Court: Better get the original. Copy cannot be introduced if the original is in existence.

Mr. Robertson:

Q. Mr. Clerk, have you the original of this demand?

The Clerk: Which demand is that?

The Court: Take your time and find it, if you can, I don't know where the papers are or anything about it.

Mr. Robertson: I don't either.

Recross-examination.

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Questions by Mr. Hite:

Q. Mr. Clark, with reference to this matter of your taking charge as receiver, you knew at the time or within a day or two afterwards that the Badders Clothing Company had taken an appeal to the Circuit Court of Appeals from the order appointing you receiver, did you not?

A. Why I think there was something of that kind, I saw it in the papers or got a notice of it.

Q. Didn't your attorney advise you of that fact?

A. I don't know but what he did.

Q. Didn't you enter an appearance in the Circuit Court of Appeals in that very proceeding?

A. By my attorney.

Q. Didn't you sign the affidavit in that very case yourself Mr. Clark?

A. Probably did.

Q. Now you say you read something about it in the newspaper?

A. That is a good while ago, I don't remember those things unless they are refreshed.

Q. Just a year ago, isn't it now. Don't you know as a matter of fact, Mr. Clark ever since you took charge there in January, 1914, that the Badders Clothing Company and Mr. Badders have contested your right to be there.

Mr. Robertson: Objected to as immaterial, not cross examination.

The Court: It don't grow out of the examination in chief and the objection is sustained.

Mr. Hite: We desire to call the attention of the court in this immediate connection to the effort made by the government, as we understand it, to show by this witness, that this defendant has never assisted him in any way in reference to his finding out the condition of the business, by way of explaining that, to show that the matter of his appointment was being contested by the Badders Clothing Company from the very moment of the appointment.

The Court: State then whether it was contested, and if he knew of it?

A. Yes, it was contested.

298 The Court: That is sufficient.

Mr. Hite:

Q. Mr. Clark, please tell the jury what papers or property of any kind of the Badders Clothing Company have you now in your possession that can be produced here?

A. We have the ledger here, right in the building, it was the other day, without somebody has stolen it since I left town.

Q. What else?

A. That shows these accounts.

Q. I didn't ask you what the things showed, Mr. Clark, I asked you what papers, books or property of the Badders Clothing Company you had in your possession now that you could produce here?

A. That is the only book that I had in my possession.

Q. Have you anything else at all besides that book?

A. All of my data made as receiver during the sale, the amount of the stock, and the fixtures, as invoiced by me, the total of the sale, and all those things.

The Court: He asked you whether you had anything beside that book, Mr. Clark?

A. No I have not.

Mr. Hite:

Q. You have absolutely nothing.

The Court: He says that, no use repeating over and over the same question.

A. I don't even have that Your Honor, it is in the hands of the court, everything put in as Exhibit- A, B, C, or something of that kind.



Q. Mr. Clark I will ask you to state whether in this room where these cases were last seen by you, when you were there and looked for these cases yesterday, did you find any evidence of any person having broken in there?

A. No, no evidence whatever.

Q. The lock on the door was uninjured?

A. Yes sir.

299 Q. Does that room have a back window?

A. Two.

Q. Did they show marks of having been violently opened?

A. I didn't examine them.

Q. You didn't examine them?

A. No.

Q. Could you see any traces of anybody having been in there at all?

A. No I didn't see any traces.

Q. Not a single trace. Were the back windows big enough to get these cases out of?

A. No.

Q. How else could they have been taken out of that place Mr. Clark except through the door?

A. Nowhere.

Q. And how else could the door have been opened as you remember seeing it on yesterday except with a key?

A. It is easy enough to get into a building, anybody anxious to get into a building can get into it without going through a door.

Q. I am asking you how these cases could be gotten out except through the door, and you said there wasn't any way?

A. That settles it doesn't it.

Q. I asked you if the condition of the door showed if it had been opened violently or some force used, and you said no?

A. You asked me that in regard to the windows.

Q. How about the door?

A. Same way about the door.

Q. The door showed no indication of it having been opened except with a key, did it?

A. The east door isn't opened with a key, it is opened with a bolt, the back door is opened with a bolt, one of these sliding bolts.

Q. Could these cases have been taken out of the back door?

A. Certainly.

Q. Was the back door bolted?

300 A. Bolted when I was there yesterday.

Q. Was the east door fastened?

A. The east door was fastened.

Q. Did it show any indication of having been opened lately?

A. No neither one of them.

Q. From what you saw there Mr. Clark, on the face of it, would it not appear that those cases if taken out of that room at all were taken out through the front door, so far as you could see?

A. No evidence to show which door they were taken out of, they could have been taken out of any one of the three doors.

Q. But I understand you to say the back door was bolted and locked?

A. It was bolted with one of these sliding bolts.

Q. On the inside?

A. The east door the same way.

Q. And the doors were bolted on yesterday?

A. Bolted yesterday morning when I went in there.

Q. And you observed no indication of violence there at all?

A. None whatever.

Q. You didn't observe that the windows had been opened?

A. No sir.

Q. These bolts were shot so the doors were bolted, this east and south door?

A. The east and south doors were bolted, the front door locked.

Q. Was the floor covered with dust?

A. Yes, an accumulation of dust.

Q. See any traces of anybody having been in there before you went in?

A. I didn't notice.

Q. Then so far as you observed there Mr. Clark these cases must have been taken out of the front door by the use of the key?

A. I don't make any such statement at all, they could have been taken out the back door, the east door or the north door.

Q. And then you think somebody might have taken them out the east door and come in the front door and rebolted the back door?

A. I haven't the slightest idea how they were gotten out, the cases are gone.

301 Q. You stated here in answer to the United States Attorney that these cases had been stolen; now what evidence have you that they have been stolen?

A. There isn't any question about it so far as my mind is concerned, they are stolen, they are not in my possession.

Q. I am asking you to tell this jury what evidence you have these cases were not taken out of the front door?

Mr. Robertson: Objected to as argumentative.

The Court: I think so. You say they were stolen because they were in your possession and they are missing and not out of your possession by your consent?

A. Not by my consent.

The Court: That is enough of it.

Re-redirect examination.

Questions by Mr. Robertson:

Q. Did Mr. Lindland who sits at the end of the table assist you all day yesterday to try to find out something about this?

A. Yes sir.

Q. With what result, if you know?

The Court: He says he didn't find out, no use repeating this ques-

tion over and over again; he stated the examination he made and what he tried to find out yesterday, with no result.

A. This door that had a key to it such an ordinary lock and key, such as is ordinarily on a store building?

A. One of these little thin keys with a Yale lock.

(Witness excused.)

Mr. Robertson: Your Honor, I desire permission to endorse upon this indictment the name of Mr. Stickle mentioned by the witness, and I will have him here as soon as I can get him from Topeka to testify on this subject. W. E. Stickle.

Mr. Robertson: The government desires to offer in evidence  
302 Exhibit No. 2, The Charter of the Marshall Clothing Company of Topeka. (Reading same.)

(A copy of Exhibit No. 2 is attached hereto and made a part hereof.)

Mr. Robertson: I offer in evidence Exhibit No. 3, the annual statement of the Marshall Clothing Company at the end of business December 31, 1911, that is the time Mr. Badders got into the company. (Reading Exhibit No. 3.)

(A copy of Exhibit No. 3 is attached hereto and made a part hereof.)

Mr. Robertson: I now offer in evidence Exhibit No. 4, certified in the same manner as before under the great seal of the State of Kansas, by the Secretary of State, certificate of assignment of the charter of the Badders Clothing Company. (Reading same.)

(A copy of Exhibit No. 4 is attached hereto and made a part hereof.)

Mr. Robertson: I offer in evidence Exhibit No. 5, certified as before, annual statement of the Badders Clothing Company.

(A copy of Exhibit No. 5 is attached hereto and made a part hereof.)

Mr. Robertson: Offer in evidence Exhibit No. 6, statement of increase of capital stock of the Badders Clothing Company. (Reading the same to the jury.)

(A copy of Exhibit No. 6 is attached hereto and made a part hereof.)

Mr. Robertson: I offer in evidence Exhibit No. 7, statement of increase of the capital of the Badders Company.

(A copy of Exhibit No. 7 is attached hereto and made a part hereof.)

Mr. Hite: If Your Honor please, we would like to have the United States Attorney state whether or not he proposes to go into the main case in this matter, and if so, that we cannot go on without having these books and papers.

The Court: I will hear about that. I suppose his purpose is to go on with the case; if you desire to argue the question as to whether we can go on or not I will hear you.

303 Mr. Hite: That is what we desire to do Your Honor.

The Court: Withdraw the jury for a time.

(Jury retires 11:30 A. M.)

The Court: Now proceed, sir.

Mr. Hite: Your Honor, I take it to be unnecessary for me to remind Your Honor of the contents of the application that was filed here, as I remember it, two weeks ago, it was mailed from Mr. Harkless' office on that day to the clerk, and to state to Your Honor that the evidence of Mr. Clark plainly shows that the defendant specially requested him to take care of these papers and to put them in—to select them out of what was there at the store and that Mr. Clark in obedience to that packed them up in these cases. The evidence before Your Honor on that application also tends to show that Mr. Badder's counsel were of the opinion, at least, that Mr. Clark was objecting, through Mr. Thomas, to the defendant looking at the papers before. These papers have been in Mr. Clark's possession, and so far as we know were in his possession when your Honor made this order. One of the things we contend we will be able to get at if access to these papers is had is a history of previous transactions which took place two years previous to this sale, which will be a matter of insistence back and forth in the case, and we simply cannot go on Your Honor without having the information contained in that correspondence. We have to have those sale slips, we have to have those invoices. Now the testimony of the receiver seems to indicate that the cash slips with reference to this particular matter were in those cases. Now the indication seems to be to me that there has been some misplacing of these cases. There seems to be no evidence of anybody having violently broken into that store room. Mr. Clark does not indicate that his search thus far indicates that anybody has gone in there except with a key. Now it may be that they have been stolen, but until we can determine that that is a fact, it seems to me the production of those papers is yet at large, that they may show up  
304 some place, and if so, we want to have an opportunity of going through them, and in order to do that, Your Honor, we asked two weeks ago, or sent out this matter, and as Mr. Harkless remarked, that up to the very minute we made our argument upon that application, the government had not tendered us those papers. Now as to the character of the stock, we say that the original invoices, these bills from eastern creditors, are important not only for our defense, but important for the purpose of cross examining these witnesses. It is quite apparent to one who has looked over the list of witnesses whose names are endorsed on the indictment that many of them are creditors, who have been creditors of the Badders Clothing Company for some time, the largest creditor the Stein-Bloch Company. And I am advised, may it please Your Honor, that the Stein-Bloch Company's transactions with Mr. Badders, through Mr. Frankenstein, began in the fall of 1911. I am advised there was correspondence between those people that bears upon our defense in this case. Mr. Guggenheim is an important witness in the case, the representative of the Stein-Bloch Company, and will go upon the stand. We had expected those papers would be here this morning and could go through this correspondence with the Stein-Bloch people, and the invoices of goods bought from that concern, and establish with

that and Mr. Guggenheim's cross examination the extent of the transactions of that concern with this Badders Clothing Company.

Moreover, as I am reminded by Mr. Harkless, all correspondence covering the last sale, which is included in these cases, bears upon the very letters which are in the indictment here, and I am advised that as to one of the persons that correspondence was had with, that they were a creditor of the Badders Clothing Company at the time of the previous sale, and that the testimony will show that they sold a large bill of goods at or about the time that first sale was made, and that soon after the sale was made they received their account in full. Now that will all be shown by these invoices and letters and other data contained in these cases, and so I submit, Your Honor, this  
305 defendant will be gravely prejudiced by being required to go on, even so far as the government's case is concerned, without having the data he asked for more than two weeks ago, and that we cannot cross-examine the government's witnesses, so far as creditors, or as to the extent of the sale had before, without having access to those papers.

Mr. Harkless: The Court will permit me this suggestion upon this application: Your Honor, this comes as a surprise to the defense, of course, probably to the government, I don't know; at least it appears here that a very unexpected turn has been taken in the production of the very proof upon which the defendant must almost exclusively rely. It is certainly a surprise to us. And I might say this, farther, that if the court has any doubt at all as to this condition, so placing the case that is impossible for us to have a fair opportunity to continue this trial, then we would like the opportunity of placing it in writing, so that this may be thoroughly placed before the court. It strikes me this is a matter which has unexpectedly happened in the trial of a case, and that it ought to be disposed of by the court, apparently, without any application, but if the court entertains any doubt whether this cause be continued, so as to let these parties make further search, we would like an opportunity of putting our application in writing. Inquiry has not been made here of people who had access to this building. Something ought to be done about it. It is not our position, if it can be obtained, to continue this case over the term; we are not asking that at all, but we ask that some opportunity be given us to present that evidence, which we think we could get, and we have counted upon it and supposed it was there, and we have been making diligent efforts all the way through from the beginning, to the end not only that they should keep it and preserve it, the application has shown here that we desired it; it has been shown here that it would be produced by the government, and that they had it. The other day, when this question was up, and when the application was here, we were informed it would be produced, and the court upon that request even ordered the  
306 receiver to produce it, and now we are confronted with the fact that it cannot be found. Now I want to suggest this to the court, before the court rules upon the question, we would like to present this application in writing, at this juncture, again, so that it may be shown clearly what our position is.

The Court: I will hear the District Attorney.

Mr. Robertson: Your Honor, I want to call your attention to some circumstances in this case, briefly, some of which Your Honor knows nothing whatever about. First, to this: From the very beginning of this case, very near the beginning of it, some suggestion was made to me, and that suggestion was made long before the term at Leavenworth in October, by my good friend and neighbor, McKeever, who was then in the case, and who I understand has been in it part of the time since, that they might want to file a bill of particulars; Mr. McKeever will verify what I say; and I following that, I said to him, you may have access to everything that we have anything to do with; and following that they sent an expert stenographer to my office who spent there days and days, or nearly a week there, who copied every single thing which the government has in this case, at least anything and everything that they wanted. And it is perfectly apparent to Your Honor from the testimony, undisputed, in this case, that they had the very same identical privilege with regard to such things as Mr. Clark may have had. Mr. Clark has shown a perfect spirit of fairness and straightforwardness in the matter, and, as stated, with a disposition to help Badders, as being one of his friends in misfortune, and has maintained that attitude all the way through up to the present moment, and so shows the undisputed testimony in this proceeding. And I can say to Your Honor there is not a man connected with the defense in this case, under any circumstances who has ever mentioned to me anything about any cases, anything about any papers in the possession of Mr. Clark, and books or papers or anything of that character, until this trial began. It is apparent to me that they not only had no use for these  
307 papers, but in reply to the insinuation of counsel, which I hope was not purposely made, upon me, will say that it looks to me like, if conclusions must be drawn, as he says, and as he has seen fit to desire to draw from the circumstances, that somebody else besides the representatives of the government are responsible for these papers not being here. Your Honor, we have gone to every length to accommodate the defendant and his counsel from the inception of this case, to give them access to everything we had, and they have in their possession now, I undertake to say, copies of every document that will be introduced in testimony on behalf of the government in this case, at least that is my information from my assistants. And I know that Mr. McKeever had that stenographer in my office for days and days working on these things, and he and Mr. Hite spent such time in my office as they desired to spend, were received courteously upon every occasion, and every help extended to them so they might know exactly what the government's case is. My attitude in regard to this case, Your Honor, is the same as all other cases that I have been connected with; I was a prosecuting attorney for a number of years before I became the representative of the government in these matters, and I have always handled my cases on the theory of playing all my cards on the top of the table, and never in a criminal prosecution tried to deceive anybody; that has been my purpose and policy in this case, and the insinuation of counsel that the government had anything to do with the disappearance of these papers is entirely without foundation.

The Court: I think it is perfectly apparent that a search as far as could be made by Mr. Clark, as receiver, has been made, as complete as he could make it within the time that he has had. I have no thought of doubt from Mr. Clark's statement here that those boxes were stored in a suitable place, and that some one has entered that building and taken those boxes away. As to how they got into the place, in my judgment, is easily explained. The lock that is  
308 on the door, which is a Yale lock, or something of that kind, as he states it, may be easily entered by making a key that would do the same thing as the regular key would do that they had in their possession. This indictment has been pending here for some time, been moved from place to place, and finally came here for trial. No assurance given if these boxes were stolen, as I think they were, by somebody, that either the defendant, or anybody else, unless you should happen to find the man who stole them and give them up, would ever be produced here. I am not going to stop this trial; going on with it.

Mr. Harkless: Your Honor, if some suggestion had been made that a thorough search has been made——

The Court: This proposition to delay this trial is overruled. That is the end of that.

Mr. Harkless: Will Your Honor permit us now to present in writing our application for a continuance based upon this situation?

The Court: I think your statement is as full as if you put it in writing, and we will not stop this trial for the purpose of putting it in writing.

Mr. Hite: Your Honor, I understand the rule to be that where an application is made for a continuance that it should set out with some degree of particularity the evidence which is missing. We would like an opportunity to prepare that, not to delay, Your Honor, but for the purpose of putting it on file as a part of this application.

The Court: The Court will allow that. You can take such time as the court is not in session to prepare any affidavit or application that you desire to file and file it with the clerk.

Mr. Hite: As to what we would expect to prove by these papers, and let that be considered as a part of this application. Do I so understand Your Honor?

The Court: It may be done.

Mr. Harkless: Any further proceeding in the case will not be considered as any waiver upon our part?

The Court: Your application is for a continuance, that is  
309 what you have, on the ground of the absence of these papers, and you have said they are very important papers, that your defense rests upon them, and the materiality of what you expect to prove, is all embodied in the statement that they are the bottom of your defense.

Mr. Harkless: Your Honor, I understand it will be considered that our written application is now before the court at this juncture, because if we should continue now to try the case without giving us an opportunity to first reduce it to writing it might put us in the awkward attitude of waiving the matter.

The Court: I don't think you would be waiving anything.



Mr. Harkless: Will your Honor consider the application is as of this minute, this date now?

The Court: Yes, and you may file it.

Mr. Harkless: And file it as of this date?

The Court: Yes, and after submitting it to the District Attorney he may file any counter affidavits he thinks proper.

Mr. Harkless: We desire to note an exception to the Court's ruling.

The Court: I thought I was ruling in your favor. You objected to my overruling it, and you want to take another turn so I may overrule it again.

Mr. Harkless: I understand Your Honor to have ruled upon our verbal application.

The Court: I do.

Mr. Harkless: We except to that.

The Court: I allow the exception.

Mr. Harkless: And of course, Your Honor, if the Court is passing upon the written application at this date, we desire to except to that also.

The Court: I don't cross creeks till I get to them generally. (Jury returns into court at 11:50 A. M.)

The Court: Go on with your evidence.

310 IRA BURDICK, called as a witness on behalf of the defendant, having been first duly sworn, testifies as follows:

Direct examination.

Questions by Mr. Robertson:

Q. Have you been sworn Mr. Burdick?

A. I have, yes sir.

Q. What are your initials?

A. I. W.

Q. Are you Ira W. Burdick?

A. Yes sir.

Q. Where do you live?

A. 1801 Lane Street, Topeka, Kansas.

Q. How long have you lived in Topeka?

A. Most of my life, about forty years.

Q. What was your business in 1911, '12, '13, and through January 1914?

A. Salesman for the Marshall and Badders Clothing Company.

Q. How long had you been engaged as salesman at that location there?

A. I think about nine years all told.

Q. Describe to the jury just very briefly the method of conducting the business, if you know, of the Badders Clothing Company, during, well say November and December of 1913, and in January 1914?

A. Well, sales were made the same as in any store and slips were made out and sent to the office and an account kept of the sales there, of the sales made.



Q. I may have to ask some leading questions, Your Honor, to save time. Did the business have a cashier?

A. Yes sir.

Q. And the cashier handled all the money?

A. Yes sir.

Q. Where was the cashier located in that building?

A. Up about center way of the south room, about half way back in the building, at a desk.

311 Q. What direction did the building face?

A. Faces east.

Q. Was the cashier's office in the west end of the building?

A. About two-thirds back toward the back.

Q. Back about two thirds of the way?

A. Yes sir.

Q. Who was the cashier during that period?

A. My wife.

Q. Had Mrs. Burdick been working in there previous to that time?

A. Yes sir.

Q. How long?

A. I think she was there eleven years.

Q. Were you ever a stockholder in the Badders Clothing Company?

A. Yes sir.

Q. Tell the jury how you come to be a stockholder?

A. Mr. Badders said that he would give me a share of stock.

Q. Ask you whether you paid for it or not?

A. I did not.

Q. Did you ever attend a stockholders' meeting of the Badders Clothing Company?

A. Yes sir.

Q. When the stockholders were all present voting?

A. No sir.

Q. Then you never attended a stockholders' meeting?

A. No sir.

Q. Mr. Burdick do you know about a sale being put on by the Badders Clothing Company in December 1913?

A. Yes sir.

Q. When did you first learn of that sale?

A. Why about a day or two before starting the sale, along about the first of December.

Q. When did the sale begin if you know?

A. December fifth.

Q. Who conducted the sale?

A. H. L. Adler sales people, the style of the firm, H. L. or A. L., I have forgotten the initials.

312 Q. Was it not J. L. Adler?

A. J. L. Adler, I guess it was.

Q. Do you know how long Mr. Adler was there?

A. Well he was there from that time up to Christmas eve I think, might have been Christmas day, I am not positive.

Q. Were you working there in the entire month of May 1913?

A. Yes sir.

Q. You know a young man by the name of S. R. Boyd?

A. Yes sir.

Q. He also work- there at that time?

A. Yes sir.

Q. Did he continue working there up until the first of January 1914?

A. Yes.

Q. And had he been there during the entire years of 1912 and 1913 in the store?

A. I think so.

Q. What was his business there?

A. He was in the furnishing goods department, furnishing goods and hats, he had charge of that.

Q. A salesman?

A. Yes sir.

Q. Who was managing this business during 1913 and also 1912?

A. Why Mr. Badders and Mr. Frankenstein I think were in 1912 and part of 1913 I think it was.

Q. Part of 1913; when did Mr. Frankenstein go out of the business if you know?

A. Why I think it was along in March or April 1913 somewheres in there, the first part.

Q. After Mr. Frankenstein went out who ran the business?

A. Mr. Badders.

Q. Do you know who was president of the Badders Clothing Company?

A. Why from bills heads it was Mr. Badders.

Q. I will ask you to state if you know whether Mr. Badders during all the time the business was in progress after Mr. Frankenstein went out had the immediate and personal management and supervision of all the business that was conducted there?

Mr. Hite: Object to the question as calling for the conclusion of the witness.

The Court: You may ask him who had charge and control of that business, if he knows.

Q. State if you know just who had control and the management of the business after Mr. Frankenstein retired from it.

Mr. Hite: Note the same objection, as calling for the conclusion of the witness.

The Court: Objection overruled. Answer.

Mr. Hite: Except.

A. Why I think Mr. Badders had charge of it as near as I can tell.

Q. Were you personally familiar with the income and expenses connected with the business.

A. No sir.

Q. Did you personally know anything about how much the sales would be month by month or the purchases of merchandise?

A. No sir.

Q. Or the expenses of operation?

A. No sir.

Q. What if anything happened in the month of May as between Mr. Badders and Mr. Boyd and yourself?

A. Happened?

Q. Yes sir.

The Court: Call his particular attention to the matter.

Q. Month of May, 1913?

A. What particular matter?

Q. Well, in regard to a pretended directors' meeting of the corporation?

Mr. Harkless: We object to the statement of counsel.

Mr. Robertson: Question withdrawn.

The Court: Did you ever meet with the gentlemen he names there?

A. Yes sir.

314 Q. As a board of directors, claiming to be a board of directors of this corporation?

A. Yes sir.

Q. What time was that?

A. In May.

Questions by Mr. Robertson:

Q. In May of what year?

A. 1913.

Q. Just tell the jury just how that happened and what was said there and where it occurred?

A. It occurred in the south basement of the store; Mr. Badders called Mr. Boyd and I down there.

Q. What did he say?

A. Held a meeting and Mr. Badders put the proposition that he should receive a commission for selling the increase, I think of ten thousand dollars in the stock.

Q. Just what was said? Give the conversation, in substance, as you remember it Mr. Burdick?

A. I think it was to be twenty five per cent commission if I remember correctly.

Q. For selling——

A. The increase of stock.

Q. What increase do you refer to?

A. I believe it was increased from twenty five to thirty five thousand dollars somewheres along in there.

Q. What else if anything else was discussed there between you?

A. The salary of the president was raised five thousand a year to take place from the start of the Badders Company.

Q. What salary was Mr. Badders already receiving prior to that?

A. I couldn't tell you.

Q. Was this to be in addition to the salary he was already receiving?

A. Yes sir.

Q. Five thousand more?

A. Yes sir.

315 Q. And those things were agreed to by you and Mr. Boyd?

A. Yes sir.

Q. Now what else if anything happened?

A. The president was to receive fifteen per cent and the secretary five per cent on all sales over fifty thousand dollars to be computed at the end of the year.

Q. For what year?

A. 1913.

Q. All sales in excess of fifty thousand dollars?

A. Yes sir.

Q. What else if anything occurred?

A. I think that is about all I remember of.

Q. I will ask you to state whether or not there was a dividend of any sort voted, and if so——

A. I believe so.

Q. Tell the jury about that?

A. There was a dividend of twenty five per cent declared on the stock at that time.

Q. On the capital stock?

A. Yes.

Q. Now before you went down into that basement what if anything did Mr. Badders say to you?

A. Just said, come down into the basement he wanted to see us a minute.

Q. Then what did he say to you?

A. He said that we had stock, going to give us a share of stock each, I believe, or had given it to us, and was going to hold a meeting, stockholders' meeting, directors' meeting.

Q. Was anybody else there besides you and Boyd and Mr. Badders?

A. No sir.

Q. When did you first learn that you were a director in the Badders Clothing Company?

A. About that time.

Q. Right then and there, wasn't it?

A. Yes sir.

316 Q. Had there ever been a stockholders' meeting at which you had been elected as such director?

A. Not to my knowledge.

Q. Had you ever taken an oath of office as a director in that corporation?

A. Never.

Q. What else happened if anything?

A. That is all I think at that time.

Q. Then what did you do, go back up stairs?

A. Went back up stairs.

Q. Who else was down in the basement beside you three men?

A. Why there was no one down in the basement we were in.

Q. No one in the basement you were in?

A. No sir.

Q. I will ask you who, if any one, acted as secretary there, or if there was a secretary, understood to be?

A. No.

Q. You don't know anything about any secretary?

A. No sir.

Q. Were there any records kept of these motions that you talked about and agreements?

Mr. Hite: Object to that unless the witness knows.

The Court: Well, was there any record kept of your proceeding down in that basement that you know of?

A. Not to my knowledge.

Q. Did you see any?

A. No.

Questions by Mr. Robertson:

Q. Did you see any books there of any kind?

A. No sir.

Q. Were you ever designated by anybody as secretary of the Badders Company?

A. Yes sir.

Q. When and where?

A. Along about the first of November, 1913.

Q. By whom?

A. Mr. Badders.

317 Q. And how did you come to be?

A. Mr. Badders.

Q. Tell how that happened?

A. Well he said that the former secretary had resigned and I would be secretary now.

Q. Did he tell you who the former secretary was, and if so what did he say?

A. Mr. Graham was the secretary, he had resigned as secretary.

Q. That Seward R. Graham of Hiawatha, Kansas?

A. I believe that is the name, yes sir.

Q. Now Mr. Burdick, did there come into your hands any corporation records of this corporation?

A. No sir.

Q. Did you ever have in your possession a seal of this corporation?

A. No sir.

Q. Did you ever see any records of this corporation?

A. No sir.

Q. After the sale began on the fifth of December, 1913, was there another directors' meeting like this one?

A. Yes sir.

Q. About when?

A. Oh along between the tenth and twelfth of December, somewhere in there I couldn't state positively the date.

Q. It was after the sale had been in progress some days?

A. Yes sir.

Q. Tell the jury just how that happened, just what was said?

A. Well it happened just the same way as the other one? Mr. Badders told us to come down stairs and we went down there and there was another dividend declared, I believe, was all at that meeting.

Q. How did you come to go down stairs, just tell the jury?

A. Mr. Badders said he would like to see Mr. Boyd and me down in the basement.

Q. And you went down with him?

318 A. I don't know as we went right down with him, couldn't swear to that, but we went down after he did.

Q. After you got down there what if anything did he say to you?

A. He just said that believe would declare another dividend on the stock, that is all I remember of.

Q. What dividend?

A. The dividend of twenty five per cent on the capital stock.

Q. On the capital stock?

A. Yes sir.

Q. Mr. Burdick did you know about the capital stock having been increased a short time before that?

A. Yes sir, that is I knew there had been a paper fixed up for it.

Q. And did you see that paper?

A. I did.

Q. And when was that?

A. As I recollect it, November 13, 1913.

Q. Of what year?

A. 1913.

Q. Just tell the circumstances about that?

A. Well Mr. Badders said we would increase the capital stock to sixty thousand I believe it was, and he brought this application to the secretary of state to me and said, sign that as secretary of the Badders Company, and I will take care of the stock and see that it is sold.

Q. And you signed the paper, did you?

A. Yes sir.

Q. Was any record made or kept of that proceeding?

A. Not to my knowledge.

Q. I call your attention to Exhibit No. 7, and ask you if that is your name there under the name of George S. Badders?

A. Yes sir, it is.

Q. Look and see if that is the document you signed for Mr. Badders?

319 A. This is not the document, no, I signed it in ink.

Q. Is it a copy of it?

A. Yes.

Mr. Hite: We object to that, Your Honor. It speaks for itself.  
The Court: Certified copy from the secretary of State.

Q. Now about this dividend that had been declared in the basement, who were present at the declaring of that twenty five per cent dividend?

A. Mr. Badders, Mr. Boyd and myself.

Q. And where was that down in the basement?

A. In the south basement, right down at the foot of the stairs.

Q. Who if any one else was present?

A. No one else.

Q. What record if any was kept of that proceeding?

A. None that I know of.

Q. You were then the secretary, at least you thought you were, isn't that true, of the corporation?

A. Yes sir.

Q. You signed that as secretary, did you not?

A. Yes sir.

Q. Had there ever been a meeting of the board of directors at which you were elected as secretary?

A. Not that I know of.

Q. Did you ever take an oath of office as secretary of the corporation?

A. No sir.

Q. Did you ever have a meeting when five directors were present?

A. No sir.

Q. Did you ever have a meeting when any others were present than the ones you have named?

A. No sir.

Q. Did you ever have any other directors' meetings than the ones you have told about?

A. Let me see, than the ones I have told about, I don't  
320 remember just which ones I have told about.

Q. In May and December.

A. There was one in November I believe at the time Secretary Graham resigned, and I was told at that meeting I was secretary.

Q. Well who was present at that meeting?

A. Mr. Badders, Mr. Boyd and myself.

Q. Was Mr. Graham there?

A. No sir.

Q. Did Mr. Graham have a desk in the store or anything of that sort?

A. No sir.

Q. Did he ever have a desk or anything of that sort in there while you were there?

A. No he never had a desk there, he used to come in and sit down at Mr. Badders' desk.

Q. How often?

A. I couldn't say, just how often, not very often. He was selling goods on the road and we bought some goods from him, the same as any other travelling salesman.

Q. And that is when he would be in the store as I understand it?

A. Yes.

Q. Now Mr. Burdick, did you get some dividends on this share of stock that had been given to you?

A. Yes.

Q. When and how much?

A. Along about the tenth of December, I got twenty five dollars on one, on the dividend declared in May.

Q. And then did you get another dividend, and if so, when?

A. Yes sir. Along about Christmas I don't remember whether a day or two before or after I got twenty dollars.

Q. Did you ever receive any of the so-called five per cent commissions to go to the secretary for sales in excess of fifty thousand dollars during the year 1913?

A. Yes.

Q. When and how much?

321 A. Well I received it along in the latter part of December, four hundred dollars.

Q. How and from whom did you receive it?

A. I received it from Mr. Badders in currency.

Q. What if anything did he say to you as to how he determined how much was coming to you?

A. He didn't say.

Q. Do you know how much, if anything, Mr. Graham was to get for having been secretary?

A. No sir.

Q. Do you know whether he did get anything or not?

A. No sir.

Q. Have you still your share of stock?

A. No sir.

Q. What became of it?

A. I returned it to Mr. Badders on January 30, 1914.

Q. Was that the day that Mr. Clark the receiver took possession of the store?

A. It was, yes sir.

Q. What was your salary while working for Mr. Badders Mr. Burdick?

A. Twenty five dollars a week.

Q. What if anything did Mr. Badders say to you which caused you to return your share of stock to him?

A. Why he just asked me to return it to him and I did so.

Q. Did he give any explanation?

A. No sir.

Q. I will ask you to state what if anything you know Mr. Burdick about the shipping of boxes of merchandise out of that store during the time the sale was in progress in December 1913 or January 1914?

A. I knew nothing of any being shipped out, never seen anything.



Q. Did you know of cases of merchandise coming back into the store?

A. Yes sir.

Q. And when?

A. On January 30, 1914.

322 Q. How many? How many of those cases do you know of coming back into the store on that day?

A. Well I think there was about six or seven I couldn't be positive.

Q. Do you know the number?

A. No sir, I couldn't swear positively to the number.

Q. How long had you been acquainted with defendant Badders?

A. Oh I have known who he was and all since he was a small boy, about twenty years I should say.

Q. State what his business had been before going into this store if you know?

A. Well he had worked in Rossington, Smith & Dallas' law office, he was a student at Washburn before that.

Q. Washburn law school?

A. I think so. And he was secretary of the Topeka Commercial Club.

Q. You know of his having been admitted to the bar to practice law?

A. I don't know of it, no sir, I had heard that he had been, I don't know.

Q. Mr. Burdick in this store did you at any time while you were there carry woolen bed blankets?

A. No sir, not to my knowledge.

Q. Carry them in the stock in the store?

Mr. Hite: Thought you mean toting them around.

The Court: Let him answer.

A. I have answered.

Q. Did the store during the time you were there carry blankets of this kind?

A. Not to my knowledge, I never saw any bed blankets.

The Court: Let me ask you a question. When you declared this dividend of twenty five per cent, the last one you declared, did you know anything about the earnings of the concern?

A. No sir.

Q. Did you know whether it earned anything to declare a dividend upon?

A. No sir.

323 Q. Well how did you come to vote for a dividend if you didn't know anything about whether it had earned anything or not?

A. I was in the employ of Mr. Badders, he was my boss, and he was paying me, and I supposed what he said he could do he could do.

Q. Then you acted on his statements and not on any knowledge you had of the business?

A. Yes sir.

## Cross-examination.

## Questions by Mr. Hite:

Q. Mr. Burdick with reference to this dividend in May was there anything said there about when that dividend was to be paid?

A. Why no special time, no sir, said it would be paid later when they saw what the business was doing.

Q. I will ask you if it isn't a fact that at that meeting it was stated, in substance, to the effect the dividend would be declared but it would depend on the earnings as to whether it would be paid or not?

A. Yes sir.

Q. That was in substance stated there to both you and Mr. Boyd was it not?

A. Yes sir.

Q. Is that not also true of the other meeting, that we can see when we can pay these things, and if we can, we will pay them?

A. Yes sir.

Q. Now Mr. Burdick I wish you would tell the jury with reference to this basement; is it really a first story in the west part of the building, or is it a basement like a cellar?

A. It is a basement like a cellar, go into the store from the main floor, or from the street and the- down the steps to the basement.

Q. It is all finished and ceiled, is it not?

A. Yes.

Q. And has windows opening on seventh street?

324 A. No sir.

Q. Where do they get the light?

A. It is electric lighted.

Q. Electric lighted; now that was used, had long tables in it for putting goods on, did it not?

A. Yes, regular stock room.

Q. Regular stock room. It was brightly lighted with electric light?

A. Yes sir.

Q. And was all floored and ceiled and finished just like any room would be, was it not?

A. Yes sir.

Q. You and Mr. Boyd and Mr. Badders didn't try to hide yourselves there did you?

A. No sir.

Q. You never concealed the fact of what you were doing there in the basement from anybody did you?

Mr. Robertson: Objected to as argumentative and for the jury to determine from the facts, Your Honor.

The Court: Well, did you ever say anything to anybody about what had transpired down there in the basement?

A. No sir.

Mr. Hite:

Q. After you were asked about it by anybody you told them did you not?

A. Yes sir, I did.

Q. And no one asked you is the only reason you didn't tell some one, isn't it?

The Court: That is argumentative and not a direct question that ought to be answered. Objection to it is sustained.

Mr. Hite: Except.

Q. Now is the same true with reference to the payment of this commission as it is to the dividends, that the commission was to be paid in case the business would stand it, was that your understanding of it?

A. That was my understanding of it, the commission was  
325 to be paid on all business over fifty thousand dollars.

Q. To be determined at the end of the year?

A. Yes sir.

Q. Now Mr. Burdick you were in the service of the Marshall Clothing Company, weren't you?

A. Yes sir.

Q. You were in that store from the time it was opened, as I understand it, very nearly, weren't you, by the Robinson Marshall people?

A. Not quite, they were in business about two years before I went to work for them.

Q. And this location there in Topeka, is Seventh and Kansas Avenue, is it not?

A. Yes sir.

Q. From your knowledge of the city there and the retail business generally, state to the jury whether that is a good or a bad location for a retail store?

A. In my judgment it is the best corner in Topeka.

Q. Are there any other clothing stores there on the Avenue?

A. Yes sir.

Q. Wish you would state what other stores there are.

A. There is the Palace Clothing Company at 709-11-13 I believe is their number.

Q. Who runs that store?

Mr. Robertson: Object as not cross examination, and immaterial, Your Honor.

The Court: Sustained.

Mr. Hite: Except.

The Court: Don't care who is running the balance of the stores.

Q. What is the other store?

A. It is Felix & Company.

Q. Felix and Company?

A. Yes sir.

Q. Mr. Burdick do you know whether or not there is a common

practice there in Topeka in retail clothing business to have sales along in November and December of every year?

A. Yes.

326 Q. It is a regular practice is it?

A. Yes sir.

Q. Now with reference to those sales, are they usually advertised extensively in the daily papers?

Mr. Robertson: Objected to as not cross examination, not material.

The Court: I don't think it is cross examination. Sustained.

Mr. Hite: Except.

Q. Mr. Burdick you say Mr. Badders was in control there, you understood that was his business, did you not?

A. Yes sir.

Q. That that store really belonged to him, that was your understanding of it?

A. Yes sir.

Q. Now you spoke about Mr. Frankenstein being there; from what period was Mr. Frankenstein there, as well as you can remember?

Q. Well he was there after it was changed from the Marshall Clothing Company to the Badders Clothing Company. I have forgotten just the date but he was there a little over a year I think.

Q. You recall the circumstances of Mr. Frankenstein coming out there before he went into the business with Mr. Badders?

A. Yes sir.

Q. Now before Mr. Frankenstein came in did the Badders Clothing Company handle the Stein-Bloch goods?

Mr. Robertson: Objected to as immaterial and not cross examination.

The Court: It does not grow out of the examination in chief. And I understand the rule to be, it is with me, I don't know how it is with you, you can only inquire of such things on cross examination as are brought out in the chief examination.

Mr. Hite: This man was inquired of with relation to Mr. Frankenstein, and what he did there.

Mr. Robertson: I will say to your Honor, the government will put witnesses on who know—

327 The Court: I am ruling on a question presented now, and I do rule upon it. It does not grow out of the chief examination and the objection to the question is sustained on that ground.

Mr. Hite: Defendant excepts.

Q. Do you know whether Mr. Guggenheim came to the store with Mr. Frankenstein the first time he came there?

Mr. Robertson: Objected to as not cross examination.

The Court: Sustained.

Mr. Hite: Except.

Q. During the month of December when Mr. Badders asked

you and Mr. Boyd to go down stairs in the basement, state whether the sale was going on upstairs?

A. Yes sir, it was.

Q. Was the place crowded with people then, lots of people in the store?

A. Well, having a pretty fair trade.

Q. And the salesmen were busy all around there, were they not?

A. Yes sir.

Q. This sale conducted by J. Adler & Company; I wish you would state what you mean by its being conducted by J. Adler & Co.

A. Well, Mr. Adler came in there and Mr. Stern and they wrote the advertising and put it in the papers, had it put in rather, and they was around and watched salesmen selling stuff.

Q. They had general charge of the sale did they?

A. Yes sir.

Q. Did they bring any salesmen there with them?

A. Yes sir.

Q. And they were put in the store there with the regular employees to assist in the sale?

A. Yes sir.

Q. Mr. Burdick had you received anything more than the twenty five dollars a week that you got as salesman on account of your being connected with the company as an officer in any way, any salary attached to it?

328 A. I didn't catch your question.

Q. When Mr. Badders told you you would be secretary of the company was there any salary attached to the office?

A. No sir.

Q. Now you got this twenty five dollars, as I understand you, some time early in December and the twenty dollars some time along about Christmas?

A. Yes sir.

Q. And you understood you were getting the twenty five per cent dividend in May, was the first one, and the last one was a part of the last dividend, is that the fact?

A. That is the fact, yes sir.

Q. Now I understood you to say this meeting declaring the second dividend the one in December took place some time between the tenth and twelfth of along there in December?

A. Yes sir.

Q. It was before the capital was increased, as you understand it, was it not? I understand the capital was increased from twenty five to thirty five thousand in November?

A. In November.

Q. So it was after that then this dividend was declared?

A. Yes sir.

Q. Mr. Burdick I understood you to say in answer to Mr. Robertson's questions that you didn't know whether any other commissions had been paid or not; you got four hundred dollars for your commission, but you don't know of any other being paid do you?

A. No sir.

Q. Have no knowledge on that subject whatever?

A. No.

Q. Do you know whether any other dividends besides the one paid to you were paid to anybody?

A. No sir.

Q. As a matter of fact Mr. Burdick you had no active charge of anything there in the store except to be a salesman?

A. That is all.

329 Q. And these other matters you did because you really understood Mr. Badders owned that store, isn't that the fact?

A. That is the fact of the case.

Q. That was your understanding after Mr. Frankenstein went out?

A. Yes sir.

Q. Before Mr. Frankenstein went in who was with Mr. Badders?

A. Why Mr. Rinehart was in there when they first started it for a week or ten days.

Q. And he was succeeded by Mr. Frankenstein?

A. Yes sir.

Q. You spoke of Mr. Graham coming, did Mr. Graham have an interest in that store?

A. Why he was the secretary as I understood it, I couldn't say whether he had any money in the store or not.

Q. You don't know anything about these matters of your own knowledge?

A. No sir.

Q. Did you know anything about the accounts or of the manner, or the general policy by which the business was handled?

A. Not a thing.

Q. Had nothing to do with that at all?

A. Not a thing.

Q. Your business was selling clothing?

A. Yes sir.

(Witness excused.)

(12:30 Recess of court until two o'clock P. M.)

(2:00 O'CLOCK P. M.)

IRA W. BURDICK (recalled):

Redirect examination.

Questions by Mr. Robertson:

Mr. Hite: Your Honor, I would like to ask the United States Attorney please to complete his *direction* examination before we cross examine, and to confine his redirect to redirect.

The Court: Anything inquired of him on direct examination may be inquired of in his cross examination. Otherwise not. That rule applies to both sides.

330 Mr. Robertson: I desire to recall the witness for further direct examination.

The Court: Very well.

Q. Do you know Mr. Badders' signature when you see it Mr. Burdick?

A. Why I have seen it several times, yes sir.

Q. I hand you a paper marked Exhibit No. 8 and ask you to state whether or not that is Mr. Badders' signature or not?

A. I think that is, yes sir.

Q. It is, is it?

A. I think so.

Mr. Robertson: Offer Exhibit No. 8 in evidence. (Reading same to the jury.)

(A copy of Exhibit No. 8 is attached hereto and made a part hereof.)

Q. You may state, if you know, what that note was given for Mr. Burdick?

A. That note was given at the time the stock was raised from thirty five to sixty thousand dollars I believe.

The Court: You say that note was given for the increased stock that was authorized as you have stated here before?

A. Yes sir, so I understand.

Q. Mr. Burdick I will hand you a paper marked Exhibit No. 9 and ask you to state whether the signature there is that of Mr. Badders?

A. Looks very much like it, yes sir.

Q. What do you say as to whether it is?

A. I thought that I did.

Mr. Robertson: Exhibit No. 9 is offered in evidence.

Mr. Hite: We object to this paper on the ground it is incompetent, irrelevant and immaterial, and has no tendency to establish any of the issues in this cause.

The Court: Let me see it. Read it.

Mr. Hite: Except.

Mr. Robertson, reading Exhibit No. 9.

(A copy of Exhibit No. 9 is attached hereto and made a part hereof.)

331 Q. I hand you a paper marked Exhibit No. 10 and ask you to state whether or not that is the signature of Mr. Badders?

A. I think it is.

Q. What do you say about it?

A. It looks like it to me.

Mr. Robertson: Offer in evidence Exhibit No. 10.

Mr. Hite. I make the same objection, and the further objection that it has not been properly identified; same objection as to Exhibit No. 9, and that it has not been properly identified as to being the act of the defendant.

The Court: You ever see him write?

A. Yes.

Q. Mr. Badders, whatever his name is?

A. Mr. Badders.

Q. Yes?

A. Yes.

Q. You have seen his signature on several occasions?

A. Yes sir.

Q. Think you are acquainted with it?

A. I have had it on several salary checks.

Q. And you say you have seen him write it on there, seen him write his name?

A. Yes sir.

Q. Is that his handwriting?

A. It looks like it.

Q. What do you say about it, is it, or not, in your opinion?

A. It is as far as I could say, without seeing him write it.

Mr. Robertson: Renew the offer of Exhibit No. 10.

The Court: Yes.

Mr. Hite: Note an exception.

Mr. Robertson: Reading Exhibit No. 10.

(A copy of Exhibit No. 10 is attached hereto and made a part hereof.)

Q. I hand you a paper Mr. Burdick marked Exhibit No. 11 and ask you to state whether that bears Mr. Badders' signature or not?

A. Yes sir.

Q. It does.

332 Mr. Robertson: I offer in evidence Exhibit No. 11.

The Court: Read it.

Mr. Hite: The same objection, Your Honor, as to Exhibit No. 10.

The Court: Same ruling.

Mr. Hite: Except. (Mr. Robertson reading Exhibit No. 11.)

(A copy of Exhibit No. 11 is attached hereto and made a part hereof.)

Q. I hand you a paper marked by the stenographer Exhibit No. 12 and ask you to state whether that bears Mr. Badders' signature or not?

A. I think it does.

Mr. Robertson: Offer Exhibit No. 12 in evidence.

Mr. Hite: We make the same objection as to Exhibit No. 10 and 11, and the additional objection that the government has not furnished us a copy of this letter.

The Court: Objection overruled.

Mr. Hite: Except.

Mr. Robertson, reading Exhibit No. 12 to the jury.

(A copy of Exhibit No. 12 is attached hereto and made a part hereof.)

Q. I hand you a paper which Miss La Bar has marked Exhibit No. 13 and ask you whether that bears Mr. Badders' signature?



A. Yes sir.

Mr. Robertson: We offer Exhibit No. 13 in evidence.

Mr. Hite: To which defendant objects for the same reasons interposed to the introduction in evidence of Exhibits numbers 10, 11, 12, together with the reason that no copy of this letter has been served upon the defendant by the government, although requested, as will hereafter be shown.

The Court: Let me understand; do you insist that the government has got to show to you, the defense, every paper that they propose to introduce in this case; if so, I would like to know what the rule is in that particular.

Mr. Hite: I am not contending, Your Honor, for any such rule as that except in the peculiar circumstances of this case; I  
333 only want to say that we have from the government copies of the letters they propose to introduce that were furnished to us at our request growing out of the matters that occurred at Leavenworth in October, and this is not included among them.

The Court: I don't care to hear anything about that; I don't suppose the government is bound to give a copy of every paper they intend to introduce in evidence to the other side.

Mr. Hite: Note an exception.

Mr. Robertson, reading Exhibit No. 13.

(A copy of Exhibit No. 13 is attached hereto and made a part hereof.)

Q. I hand you a paper marked Exhibit No. 14 and ask you whether that bears Mr. Badders' signature?

A. I would say it does, yes sir.

Mr. Robertson: Offer Exhibit No. 14 in evidence.

Mr. Hite: Same objection as heretofore to the others, and as part of the objection we desire to call the attention of the court to the papers sent to the defendant's counsel by the Assistant United States Attorney with reference to the introduction of letters referred to therein.

The Court: Objection overruled.

Mr. Hite: Except.

Mr. Robertson, reading Exhibit No. 14.

(A copy of Exhibit No. 14 is attached hereto and made a part hereof.)

Q. I hand you a paper marked Exhibit No. 15 and ask you to state whether that bears Mr. Badders' signature?

A. I think it does.

Mr. Robertson: Offer Exhibit No. 15 in evidence.

Mr. Hite: To which we make the same objection heretofore offered, except that in this case we do not object on the ground a copy was not furnished because we have a copy.

The Court: Objection overruled.

Mr. Hite: Except.

Mr. Robertson, reading Exhibit No. 15.

(A copy of Exhibit No. 15 is attached hereto and made a part hereof.)

334 Q. I hand you a paper marked Exhibit No. 16 and ask you to state whether that bears Mr. Badders' signature?

A. I think so.

Mr. Robertson: Offer Exhibit No. 16 in evidence.

Mr. Hite: To which we make the same objection as heretofore made especially directing the attention of the court in reference to these letters that they do not conform to the allegations in the indictment.

The Court: I don't suppose these letters, unless they are counted upon in the indictment—are these particular letters counted on in the indictment?

Mr. Robertson: No, not counted upon, these are offered to show the scheme, that is all.

The Court: Go on. Overruled.

Mr. Hite: Except.

Mr. Robertson, reading Exhibit No. 16.

(A copy of Exhibit No. 16 is attached hereto and made a part hereof.)

Q. Hand you paper marked Exhibit No. 17 and ask you to state whether that bears Mr. Badders' signature?

A. Yes sir I think it does.

Mr. Robertson: Offer Exhibit No. 17 in evidence.

Mr. Hite: Same objection as to Exhibit No. 16.

The Court: Same ruling.

Mr. Hite: Except.

Mr. Robertson, reading Exhibit No. 17.

(A copy of Exhibit No. 17 is attached hereto and made a part hereof.)

Q. Mr. Burdick did you ever see your name printed as secretary on any stationery of the Badders Company?

Mr. Hite: Objected to as immaterial.

The Court. Answer.

Mr. Hite: Except.

A. No sir.

Q. I hand you a paper marked Exhibit No. 18 and ask you to state if that bears the signature of Mr. Badders?

A. I think it does.

335 Mr. Robertson: Offer Exhibit No. 18 in evidence.

Mr. Hite: Same objection as to No. 17.

The Court: Same ruling.

Mr. Hite: Except.

(A copy of Exhibit No. 18 is attached hereto and made a part hereof.)

Q. Hand you paper marked Exhibit No. 19 and ask you to state whether that bears Mr. Badders' signature?

A. I think so.

Q. You say it does?

A. Yes sir, it does.

Mr. Robertson: We offer Exhibit No. 19 in evidence.

Mr. Hite: Same objection as to No. 18.

The Court: Same ruling.

Mr. Hite: Exception.

Mr. Robertson, reading exhibits Nos. 18 and 19 to the jury.

(A copy of Exhibit No. 19 is attached hereto and made a part hereof.)

Q. I hand you a paper marked Exhibit No. 20 and ask you to state if that bear- Mr. Badders' signature?

A. I think it does, yes sir.

Mr. Robertson: Offer Exhibit No. 20 in evidence.

Mr. Hite: We object to this offer specially, Your Honor, because it does not appear to be addressed to any person whomsoever and there is no means of knowing unless it was a circular letter whether it was ever transmitted to anybody. There is a stamp on it, that I do not suppose is offered in evidence; that apparently was not there when the letter was written.

Mr. Robertson: The government wants to show the scheme, it is immaterial whether received by anybody or not for the purpose we are offering it, shows the scheme.

Mr. Hite: Objected to as incompetent, irrelevant and immaterial, it not having been shown that anybody ever saw it.

The Court: Objection overruled.

Mr. Hite: Except.

Mr. Robertson, reading Exhibit No. 20.

336 (A copy of Exhibit No. 20 is attached hereto and made a part hereof.)

Q. Mr. Burdick do you know whether this letter marked Exhibit No. 20 or similar ones were sent out to the customers of the Badders Clothing Company?

Mr. Hite: We object to the question, and to "similar ones."

The Court: Did you ever see that paper?

A. Not until handed to me in court.

Q. Ever see one of them of the same kind? In the store?

A. No sir.

Mr. Robertson:

Q. State if you know whether that is a circular or original letter?

Mr. Hite: Objected to as incompetent, irrelevant and immaterial, the witness having answered he knows nothing about it.

The Court: Makes no difference whether a circular or a letter.

Mr. Robertson: Pass it to the jury they can look at it and see.

Mr. Hite: We object to it being exhibited to the jury.

The Court: Why?

Mr. Hite: For the same reasons.

The Court: I have admitted it, I suppose the jury is entitled to see it after I have admitted it.

Mr. Hite: Except. That is for the court to say.

The Court: If a paper is offered in evidence and the court permits it to be read to the jury, the jury may examine the paper after it is admitted.

(A copy of Exhibit No. 20 is attached hereto and made a part hereof.)

Q. I hand you a paper marked Exhibit No. 21 and ask you to state whether that bears the signature of Mr. Badders?

A. I think it does.

Mr. Robertson: Offer Exhibit No. 21 in evidence.

Mr. Hite: Same objection to that as to the others, and that we have had no copy of it under the agreement referred to.

The Court: So as to obviate any further trouble about this objection on this ground, I don't think it is available, and I don't  
337 know of any reason why the District Attorney gave you any of them; he is not compelled to; go on and read that one.

Mr. Hite: Except.

Mr. Robertson: Reading Exhibit No. 21.

(A copy of Exhibit No. 21 is attached hereto and made a part hereof.)

Q. I hand you paper marked Exhibit No. 22 and ask you to state whether that bears the signature of Mr. Badders?

A. I think so.

Mr. Robertson: Offer in evidence Exhibit No. 22.

Mr. Hite: Same objection as to the one previously, except the defendant has a copy of that letter furnished by the government.

The Court: The ruling is the same and you needn't mind saying that it is in your list; don't make any difference about that, whether it is in or out.

Mr. Hite: Pardon me, I don't like to interrupt Your Honor, but I would like to understand if Your Honor understands the objection made upon the agreement about these letters?

The Court: I am not clear on anything particularly, I am only ruling upon what may be the testimony. If you had had an agreement — should not have any oral testimony in here.

Mr. Hite: Let me explain and perhaps my objections may appear more forcible, or less. At the Leavenworth Term we filed a motion for a bill of particulars and that motion was denied upon the statement made by the United States Attorney that whatever he had he would let us take copies of. We were asking for special matters. Afterwards the United States Attorney permitted our stenographer to go down there and take the copies and sent us a paper with the copies, which I now have in my hand, and in which is stated—

Mr. Robertson: Mr. Hite is simply going to raise a question of who is a truthful lawyer before Your Honor.

The Court: There might be some difficulty in proving which was which.

Mr. Robertson: I suppose that is true.

338 The Court: Let me understand, and I do understand, that by some arrangement certain of this testimony was furnished on your asking for a bill of particulars, and that because of the asking for a bill of particulars formed the consideration for this agreement. This is a kind of a case that is tried very often in the courts of this country, and it is a very simple proposition, if you will allow me to say it; that is, where a scheme is alleged to have been formed to defraud creditors, and others, of their money or property, beyond the statement in the indictment that in pursuance of that scheme, after the scheme is set forth, nothing is necessary to be stated in the indictment except the letters that he says were sent in accordance with that scheme. I do not propose to get into any discussion about these matter-, but courts are like other people, they are likely to be mistaken, very frequently are.

Mr. Hite: My understanding, Your Honor, is, the rule is, that where a bill of particulars is asked and directed to be granted, that the government is then confined to what it states in the bill of particulars; I am not now speaking of the indictment; and that practice is recognized in the district, and accordingly we filed an application for a bill of particulars, the result of which is, as I understand it, Mr. McKeever had some talk with Mr. Brady, brought down these papers, came to us from Mr. Molone, the stenographer, with this paper, which I take it was signed by Mr. Brady, the Assistant United States Attorney, and I only want to apprise Your Honor of the situation without debating the correctness of Your Honor's ruling.

The Court: I don't think any light will be thrown on this subject by further discussion. Objection overruled.

Mr. Hite: Except.

Mr. Robertson, reading Exhibit No. 22.

(A copy of exhibit No. 22 is attached hereto and made a part hereof.)

Q. I hand you a paper marked Exhibit No. 23 and ask you to state whether that bears the signature of Mr. Badders?

339 A. I think it does.

Mr. Robertson: Offer in evidence Exhibit No. 23.

Mr. Hite: Same objection.

The Court: Same ruling.

Mr. Hite: Except.

Mr. Robertson, reading Exhibit No. 23.

(A copy of Exhibit No. 23 is attached hereto and made a part hereof.)

Q. I hand you a paper marked Exhibit No. 24 and ask you to state of that bears Mr. Badders' signature?

A. Yes sir, I think it does.

Mr. Robertson: Offer Exhibit No. 24 in evidence.

Mr. Hite: Same objection.

The Court: Same ruling.

Mr. Hite: Except.

Mr. Robertson, reading Exhibit No. 24 to the jury.

(A copy of Exhibit No. 24 is attached hereto and made a part hereof.)

Q. Hand you a paper marked Exhibit No. 25 and ask you whether that bears Mr. Badders' signature?

A. I think so.

Mr. Robertson: Offer in evidence Exhibit No. 25.

Mr. Hite: Same objection.

The Court: Same ruling.

Mr. Hite: Except.

Mr. Robertson, reading Exhibit No. 25 to the jury.

(A copy of Exhibit No. 25 is attached hereto and made a part hereof.)

Q. Hand you paper marked Exhibit No. 26 and ask you to state whether that bears Mr. Badders' signature?

A. I think it does.

Mr. Robertson: Offer Exhibit No. 26 in evidence.

Mr. Hite: Same objection.

The Court: Same ruling.

Mr. Hite: Except.

Mr. Robertson, reading Exhibit No. 26 to the jury.

(Copy Ex. 26 attached hereto.)

340 Q. I hand you a paper marked Exhibit No. 27 and ask you to state whether that has Mr. Badders' signature upon it?

A. I think it has.

Mr. Robertson: Offer Exhibit No. 27 in evidence.

Mr. Hite: Same objection.

The Court: Same ruling. And I submit to counsel if you would just show the papers you propose offering to counsel on the other side probably they will admit the signatures and save a great deal of time.

Mr. Hite: Prefer not to Your Honor.

The Court: Go ahead, I only suggested that as a means of shortening it.

Mr. Hite: There is some doubt as to some of them, and for that reason I am not willing to admit it.

Mr. Robertson, reading Exhibit No. 27.

(A copy of Exhibit No. 27 is attached hereto and made a part hereof.)

Q. I hand you a paper marked Exhibit No. 28 and ask you to state whether that bears the signature of Mr. Badders. What do you say about it?

A. Yes sir, I think it does.

Q. I hand you a paper marked Exhibit No. 29 and ask you to state whether that bears the signature of Mr. Badders?

A. Yes sir, I think it does.

Q. I hand you a paper marked Exhibit No. 30 and ask you to state whether that bears the signature of Mr. Badders?

A. Yes sir, I think it does.

Q. I hand you a paper marked Exhibit No. 31, please state whether that bears the signature of Mr. Badders?

A. Yes sir, it does.

Q. Hand you a paper marked Exhibit No. 32 and ask you to state whether that bears the signature of Mr. Badders?

A. Yes sir, it does.

Q. -and you paper marked Exhibit No. 33 and ask you to state whether that bears the signature of Mr. Badders?

A. I wouldn't be positive about that one.

Q. What is your judgment about it?

341 A. It does not look, just like his writing.

Q. I hand you a paper marked Exhibit No. 34 and ask you to state whether that is his writing?

A. Yes sir, I think it is.

The Court: What do you say about it?

A. I thought it was.

Q. I hand you a paper marked Exhibit No. 35 and ask you to state whether that bears the signature of Mr. Badders?

A. Yes sir, I think it does.

Mr. Hite: Your Honor, we would like to see the papers exhibited to the witness to cross examine him as to the signatures.

The Court: That may be done.

Mr. Hite: Twenty eight to thirty five, inclusive.

Mr. Robertson: They are papers that you are quite familiar with.

The Court: Confine your examination to the signatures so that we may get along.

Mr. Robertson: Your Honor appreciates that I expect to use these with another witness who is not familiar with the signature of Mr. Badders.

#### Cross-examination.

#### Questions by Mr. Hite:

Q. Mr. Burdick, do you know of the circumstances of Mr. Boyd signing letters in the name of the Badders Company, or Badders Clothing Company, and putting the name George S. Badders at the bottom of it?

A. No sir.

Q. Know of his signing any circulars in that way?

A. Yes I know he signed some circulars.

Q. Did you notice his signature of the name George S. Badders on the circulars?

A. No sir.

Q. You say you never noticed it?

A. No sir.

Q. You know then of the fact, however, of his having done so?

342 A. He told me he signed some.

Q. That all you know about that?

A. Yes.

Q. Did you ever see Mr. Boyd sign the name George S. Badders?  
A. Not to my knowledge.

(Witness excused.)

S. R. BOYD, called as a witness on behalf of the plaintiff, having been first duly sworn, testifies as follows:

Direct examination.

Questions by Mr. Robertson:

- Q. What are your initials Mr. Boyd?  
A. S. R.  
Q. Where do you live Mr. Boyd?  
A. In Wichita, Kansas.  
Q. What is your business?  
A. Clothing business.  
Q. Who are you with there?  
A. Greenfield Brothers.  
Q. Were you at one time with the Badders Clothing Company in Topeka?  
A. Yes sir.  
Q. For what period of time?  
A. From November 1911 until it closed up in January 1914.  
Q. How long have you known the defendant?  
A. That length of time.  
Q. You remember about a sale something over a year ago there?  
A. Yes sir.  
Q. How long prior to that sale did you know there was going to be a sale?  
A. Oh I should think about a month.  
Q. How did you learn about it?  
A. We had talked it over.  
Q. When did that sale begin? If you know?  
A. Fifth of December I think.  
343 Q. Prior to the fifth of December had you gone any where with Mr. Badders to buy merchandise?  
A. Yes sir.  
Q. Where did you go first?  
A. To St. Louis.  
Q. After the St. Louis trip where did you go?  
A. Chicago.  
Q. Did you go from St. Louis over to Chicago?  
A. No sir.  
Q. Tell the jury how that was?  
A. We went to St. Louis and came back to Topeka and then I think about a week later we went to Chicago.  
Q. About what time was it you went to St. Louis?  
A. I don't remember the date but it was the fore part of November, about the first week I think of November.  
Q. Do you remember the occasion of a certificate being made out about increasing the capital stock of this corporation?



A. I knew when it was, I didn't see——

Q. Sir?

A. I didn't see it.

Q. You knew about it?

A. I knew about it yes.

Q. Did you go to St. Louis before or after that paper was made out?

A. I don't remember.

Q. Did you go to Chicago before or after that paper was made out?

A. I don't remember that either.

Q. Well do you remember what time in the month it was you went to Chicago with Mr. Badders.

A. I don't remember the date it was about the middle of the month.

Q. About the middle?

A. Yes.

Q. Where else did you go on that trip besides Chicago?

A. To Rochester and New York.

Q. New York City?

344 A. Yes sir.

Q. You and Mr. Badders return home together?

A. Yes sir.

Q. Did you later go by yourself on another trip to buy goods?

A. To Chicago.

Q. To Chicago. When was that?

A. The first of December.

Q. When you went away from Topeka on the first of December did you know at that time you were going to Chicago?

Mr. Hite: Objected to as immaterial.

The Court: State where you were going when you left Topeka? Where did you go?

A. Kansas City.

Mr. Robertson:

Q. How did you come to go to Chicago?

Mr. Hite: Objected to as immaterial, the defendant was not with the witness at the time and what this witness did in going to Kansas City or Chicago, or any other place will not be brought home to the defendant.

Mr. Robertson: It will be brought home to the defendant.

The Court: Ask him whether he went to Chicago at the instance of the defendant.

Mr. Hite: We object to the statement of the United States Attorney that it will be brought home to the defendant, and ask that the court direct the jury to pay no attention to the remark of the District Attorney.

The Court: If the Court was to direct the jury to pay no attention to remarks made by the counsel here he would be engaged in that business all day.

Mr. Hite: Except.

The Court: You go on and ask him whether he went at the instance of this defendant.

Mr. Robertson:

Q. Did you go from Kansas City to Chicago at the request of Mr. Badders?

A. Yes sir.

Q. Tell how it occurred?

345 A. He called me up in Kansas City and told me to go to Chicago.

Q. What if anything did he say you should go there for?

Mr. Hite: Objected to as leading.

The Court: State what he said. Talk with him over the phone?

A. Yes.

Mr. Robertson:

Q. Recognize the voice?

A. I did.

Q. State what he told you?

A. He told me to buy goods of Rosenwald & Weil.

Q. And did you buy goods on that trip for the Badders Company?

A. Yes sir.

Q. And when did you get back to Topeka?

A. Got back the fourth I think or the third, the third I guess.

Q. I will ask you whether prior to this trip to St. Louis and New York, and by yourself back to Chicago, whether you had ever gone alone or with Mr. Badders to buy goods away from Topeka?

A. Except to Kansas City.

Q. You never had before been with him to Chicago, St. Louis, or New York?

A. No sir.

Q. Upon this trip to St. Louis who did you buy goods from, meaning you and Mr. Badders together?

A. From Rice-Stix, Schwab Clothing Company, Max & Haas and Orenstein & Rice—

Q. Are you acquainted with the Ely Walker Dry Goods Company?

A. Yes sir.

Q. Did you buy there?

A. I don't think we did that time.

Q. In referring to Orenstein & Rice do you mean the Orenstein-Rice neck wear Company?

A. Yes sir.

Q. Now upon your trip to Chicago and New York with Mr. Badders were you and Mr. Badders together all the time?

A. Yes sir.

346 Q. You were always together whenever there were any negotiations about the purchase of goods. Were goods purchased upon that trip by you in New York City?

A. Yes sir.

Q. From whom?

A. I don't remember the names of all of them.

Q. You don't remember the names of all of them; have you an idea as to the amount that you bought on that trip?

A. You mean all the stuff we bought on the trip or in New York City?

Q. The stuff you bought on the trip, if you know?

A. I thought it was between fifteen and twenty thousand dollars worth of stuff.

Q. Can you give the names of any of the houses from whom you bought in New York on that trip?

A. I know we bought from Jacob Cohn & Sons, I don't remember who they were, the style of the firms.

Q. Where else did you buy goods upon that trip?

A. Rochester.

Q. From how many houses did you buy goods in Rochester, New York?

A. I should judge about five or six.

Q. Can you give the names of the houses?

A. Rosenberg's, Al Black's, that is all I remember of them.

Q. Did you make purchases in Chicago either way on the trip?

A. I think we did on the way back.

Q. Do you know how many houses?

A. Two or three.

Q. Who were they?

A. Schwartz Brothers and Whitney Christensen.

Q. On that trip were goods bought in Kansas City?

A. No we didn't stop in Kansas City.

Q. Any other cities?

A. No that is all.

Q. How long after the return from the trip to New York was it until you went alone to Kansas City and to Chicago?

A. About four days I think.

347 Q. What instructions had you, if any, from Mr. Badders when you left on your trip alone to Kansas City?

A. I was to buy some flannel shirts from Smith, McCord & Townsend.

Q. Kansas City, Mo.?

A. Yes sir.

Q. And then to return to Topeka?

A. Yes sir.

Q. And upon that occasion he called you over the telephone, did he?

A. Yes sir.

Q. And you went immediately to Chicago?

A. Went that night.

Q. What instructions, if any, did Mr. Badders give you over the telephone relative to going to Chicago.

A. We had looked at some stuff at Rosenwald & Weil's and he told me to go up there and pick it out and get it.

Q. What other houses did he mention, if any, for you to go and get goods?

A. I think he mentioned Grant and Rothschild.

Q. I hand you a paper marked Exhibit No. 36 and ask you to state if you received that from Mr. Badders upon that trip?

Mr. Hite: Object to the question as calling for the statement of the contents of the paper.

Q. Received that from Mr. Badders?

The Court: That is what he asked, if he got it from Mr. Badders.

Mr. Hite: I understand him to say he was in Chicago and Mr. Badders was in Topeka; how does he know.

The Court: Well find out.

Mr. Robertson:

Q. From whom did you receive it?

A. From Mr. Badders.

Q. I will ask you whether you received it from a Telegraph Company or not?

A. Yes sir.

Q. It was delivered to you by a Telegraph Company?

A. It was at the Hotel.

348 Q. Just explain to the jury how you received it, whether it was in an envelope or not?

A. Yes, it was in regular telegram envelope in my key box at the hotel.

Mr. Robertson: We offer Exhibit No. 36 in evidence.

Reading same.

(A copy of Exhibit No. 36 is attached hereto and made a part hereof.)

Q. I hand you a paper that has been marked Exhibit No. 37 and ask you to state if that is a telegram you also received from Mr. Badders in Chicago?

A. Yes sir, it is.

Mr. Robertson: Offer Exhibit No. 37 in evidence.

Reading the same.

(A copy of Exhibit No. 37 is attached hereto and made a part hereof.)

Q. Did you go to St. Louis?

A. No sir.

Q. That trip?

A. No sir.

Q. Why not?

A. Because I got what I wanted in Chicago.

Q. Do you know the amount, and if you do, you may state of your purchases upon that trip?

A. I don't believe I can.

Q. Have you a judgment as to the amount at wholesale cost?

A. I don't believe I could.

Q. Do you know how much you bought upon that trip to St. Louis?

A. I don't remember that either.

Q. Mr. Boyd do you remember the occasion of a directors' meeting in May 1913, in the basement there of the Badders Clothing Company?

A. Yes sir.

Q. Were you a stockholder in the Badders Clothing Company?

A. I had a share of stock.

Q. Did you ever actually receive a share?

349 A. No sir.

Q. Explain to the jury how you concluded you were a stockholder?

A. Mr. Badders told me I was, told me I owned one share of stock.

Q. Did you ever actually have in your possession a share of stock? A certificate of a share of stock?

A. No sir.

Q. Just explain to the jury what happened there about the directors' meeting in May 1913?

A. Declared a twenty five per cent dividend on the capital stock and raised Mr. Badders' salary five thousand dollars a year, and give the president fifteen per cent, and the secretary five per cent on all sales over fifty thousand dollars.

Q. Remember anything about any commissions on sale of stock?

A. And twenty five per cent on raising ten thousand dollars of the capital stock of the concern.

Q. Tell the jury how you come to do that?

A. Mr. Badders suggested it.

Q. Can't you relate in substance the conversation, just what happened?

A. I don't believe I remember just the words we used now.

Q. In what capacity did you think you were acting there in doing that?

A. I just thought I was a director.

Q. When did you first learn you were a director?

A. About that time.

Q. How did you learn it, explain to the jury?

A. Mr. Badders told me and he give me one share of stock and then made me a director.

Q. Were there any records made of those transactions there in the basement there that day?

A. I don't think so.

Q. Sir?

A. I don't think there was.

Q. What discussion if any did you have about the condition of the corporation as to whether it could pay these things or not?

A. There wasn't any.

350 Q. Were you familiar with the earnings of the company and knew what shape it was in?

A. No sir.

Q. Did you ask Mr. Badders?

A. I don't believe I did.

Q. Were you ever elected a director that you know of at any stockholders' meeting?

A. No sir.

Q. Did you ever take an oath of office as director of the corporation?

A. I did not.

Q. You were there when the sale was held by Mr. Adler in December 1913?

A. Yes sir.

Q. After Mr. Adler went away did the sale continue in January?

A. Yes sir.

Q. Until the receiver took charge?

A. Yes sir.

Q. During the sale in the store in the month of December I will ask you whether you had another one of these directors' meetings?

A. I guess we did.

Q. Whereabouts Mr. Boyd?

A. In the south basement.

Q. About when?

A. Well it was right along in the fore part of the sale.

Q. Who were present at that meeting?

A. Mr. Burdick and Mr. Boyd and I.

Q. Did you know at either of these times, or were you advised by any one of the number of directors this corporation was required to have under its charter?

A. No sir.

Q. Go ahead and detail what happened at this meeting?

A. They declared twenty five per cent dividend.

Q. Explain just how that was done?

A. Well Mr. Badders said that we would declare a twenty five per cent dividend and we did.

351 Q. Did you make any record of that proceeding?

A. I think not.

Q. Do you know of any record being kept of any of those proceedings you have been telling about?

A. I do not.

Q. Did you ever see any corporation records of that corporation?

A. I did not.

Q. How long had you been engaged in the clothing business Mr. Boyd?

A. About nine years steady.

Q. What class of goods were you ordinarily handling in this store there?

A. You mean——

Q. Prior to the sale?

A. Names of the stuff, or quality or what?

Q. The quality?

A. We handled good lines.

Q. You were trying to run what was known as a high class clothing store, weren't you?

A. Yes sir.

Q. Now upon this trip of yourself and Mr. Badders to New York what kind of merchandise did you buy as compared with what you had in the store?

A. Well we bought a cheaper line of stuff than we were in the habit of handling, that is in the clothing line.

Q. Did you say anything to Mr. Badders about that and if so what?

A. I don't remember just what was said, I think there was something said about the quality of that, but that was the only kind of stuff you could buy to sell you know, to get it cheap enough.

Q. Mr. Badders talk to you on the way to New York about having this sale?

A. Yes sir.

Q. What was said if you remember?

A. Why he said the town would stand for a sale, Topeka  
352 would stand for a sale, the conditions were all right there for one.

Q. Did you then agree the town would stand for a sale too?

A. Yes.

Q. Upon what did you base that?

A. Well there was a Felix concern there went bankrupt and they had stores in Kansas City and Minneapolis, and they put on a big sale in Minneapolis and in Kansas City, and we cancelled a lot of our stuff anticipating the sale in Topeka, and they got tied up in the courts and couldn't use anything only what they had in the store and the sale didn't amount to much.

Q. Felix sale didn't amount to much?

A. No and so we figured we could have a sale and it would amount to something.

Q. Mr. Boyd did you ever get any of these so-called dividends and if so tell the jury about it?

A. Yes sir, I got both of them.

Q. Tell the jury how much you got?

A. I got twenty five dollars the first one and twenty dollars the second one.

Q. When did you get those payments?

A. In December.

Q. Who did you get them from?

A. Mr. Badders.

Q. Check or cash?

A. Cash.

Q. At this December directors' meeting in the basement there was there any talk about the resources and ability of the company to pay these dividends and salaries &c.?

A. I don't think there was, I think Mr. Badders said that it would stand for a dividend or something like that.

Q. Were you ever called upon to sign back any share to Mr. Badders or anything of that sort?

A. No sir.

## Cross-examination.

## Questions by Mr. Hite:

Q. Mr. Boyd how did you happen to go into the employ of  
353 the Badders Clothing Company?

A. Why I went there through Mr. Cook in Topeka.

Q. That was in the fall of 1911?

A. Yes.

Q. That before the sale they had at that time?

A. Yes sir.

Q. Then you were present at the time they had the first sale?

A. Yes sir.

Q. As well as at the time they had the second sale?

A. Yes sir.

Q. You knew the results of that first sale, did you?

A. Yes sir.

Q. Now I believe you said that your recollection is that you bought,  
you and Mr. Badders together, the first time that you were away,  
between fifteen and twenty thousand dollars' worth?

A. I think that was about all that was bought, is what I meant.

Q. Both trips?

A. All together is what I thought.

Q. Now Mr. Boyd were there any cancellations?

A. Any what?

Q. Any cancellations?

A. There were quite a few of them while we were in New York  
City.

Q. That is, you would buy goods and then find that you had  
bought too much and cancel?

A. Some of them, and some of them we found stuff we liked  
better.

Q. And then you would go back and cancel the stuff. Were there  
any cancellations after you got home, after you got back?

A. I don't believe I remember.

Q. Do you know about how much the purchases were outside of  
the cancellations, I mean after you made your cancellations?

A. I don't know just what it was.

Q. Well was it as much as ten thousand dollars?

A. I don't think so.

Q. Just about that or more than that?

A. I think it was more than that.

354 Q. You think it was more than that?

A. Yes.

Q. Do you know about how much was the value of the goods that  
was received as the result of your purchases in the east?

A. I don't know exactly how much it would be but I have been  
under the impression it was right around, oh, I should think fifteen  
thousand dollars, twelve, fifteen, something like that; that is the  
impression I have had, it would not be necessarily correct.

Q. That would be the wholesale invoice price, would it not?

A. Yes sir.



Q. Were any of these goods bought subject to discount?

A. Yes sir.

Q. Do you know any of them that were bought subject to as much discount as one third off?

A. Yes sir.

Q. Did you look in many places where you didn't buy any goods?

A. Some, yes sir.

Q. That is, you didn't buy every place that you went?

A. No sir.

Q. Did you make careful selections of what you did get Mr. Boyd?

A. Yes sir.

Q. Say anything to the merchants that you were buying from with reference to buying for this sale?

A. I think so.

Q. That is, these creditors, that you were buying there for the purpose of having this sale out in Topeka?

A. Yes sir.

Q. Now as I understand it at the time the Badders Clothing Company store had plenty of the high class goods, and the goods that you bought in the east were of the cheaper kind, is that true?

A. Yes sir.

Q. Was that for the purpose of giving you a stock of the cheaper as well as the better goods?

355 A. You can't buy the other stuff at the discount you can buy this clothing at, you couldn't get them at any price that you could sell them either.

Q. I didn't understand you?

A. You couldn't get a good enough price on that high class merchandise to make a good sale.

Q. So you bought the cheaper lot of stuff to make a good sale, was that it. You spoke of Mr. Badders directing you to buy some flannel shirts; you needed those in stock, didn't you?

A. Yes sir.

Q. That is why you bought them; did you buy any furnishings on that trip, gent's furnishing goods?

A. We bought some in St. Louis on the first trip.

Q. Did you buy any in Rochester or New York City?

A. I don't remember whether we bought any furnishings then or not.

Q. During that trip did you buy anything that your judgment as a clothing man didn't show that you needed for that sale?

A. It was all stuff that we could use, every bit of it.

Q. All the stuff you bought was stuff you could use in the sale?

A. It would sell.

Q. And as I understand, Mr. Boyd, you had had the experience of the previous sale, is that true?

A. Yes sir.

Q. I mean the previous sacrifice or bankruptcy sale, whatever you call it. Now who conducted that sale that took place two years before?

A. H. L. Gilmore.

Mr. Robertson: Objected to as not proper cross examination. Immaterial.

The Court: Answer.

A. H. L. Gilmore.

Q. The same people that conducted the sale in December 1913, the same firm?

356 A. The same firm I think yes.

Q. Mr. Boyd, I understood you to say that you didn't see any records kept of these meetings; you don't know whether records were kept by some one else or not, do you?

A. I don't know.

Q. You don't know anything about that?

A. No sir.

Q. You didn't see any minutes taken at the time, Mr. Boyd?

A. No sir.

Q. Was there any difference in the way the sales were made the one in November 1911 and the one in 1913?

Mr. Robertson: Objected to as not cross examination, immaterial.

The Court: Let him answer.

A. They were practically the same.

Q. You didn't buy or assist Mr. Badders in buying any goods for the first sale, did you?

A. No sir.

Q. Was there anybody that went with you and Mr. Badders from Rochester New York to New York City?

A. Mr. Guggenheim went over with us from Stein-Bloch's.

Q. Mr. Guggenheim went over with you from Stein-Bloch's?

A. Yes sir.

Q. Had Mr. Badders in your presence talked with him anything of this sale?

A. Yes, they talked about it.

Q. And he went with you and Mr. Badders down to New York City?

A. Yes sir.

Q. Did he know what you and Mr. Badders were east for? What business you were on?

A. I think he did.

Q. You had talk of that kind, did you?

A. Yes sir.

Q. Mr. Boyd did Mr. Badders on that trip in your presence show Mr. Guggenheim a list of the purchases he had made?

A. Yes I helped him figure out, figured it out in Rochester.

Q. In Rochester?

357 A. Yes sir.

Q. Did you go back to Rochester from New York City?

A. That is when we did it.

Q. So after you made purchases in New York City, you and Mr. Badders went back to Rochester, and there you made Stein-Bloch & Company a list of the purchases.

A. We made it to Mr. Guggenheim in the hotel.

Q. You made it to Mr. Guggenheim in the hotel?

A. On Sunday.

Q. And then you and Mr. Badders figured up what you had bought in New York and reported it to Mr. Guggenheim, is that right?

A. We made out a list of them.

Q. Did you hear anything said to Mr. Guggenheim in Mr. Badders' presence relative to the character of the goods that you had bought?

A. I don't remember anything about that.

Q. Do you know whether any goods had been ordered from Stein-Bloch and Company before you and Mr. Badders went east?

A. You mean in the regular way?

Q. Yes?

A. Yes there had.

Q. Do you know whether or not any of that order had been received at the Badders Clothing Company?

A. I think it had.

Q. Do you know how much?

A. I don't remember that, I think it was about nine thousand dollars' worth, something like that.

Q. Of fall goods?

A. Yes, tried to cancel part of it.

Q. Sir?

A. Tried to cancel part of it and then didn't do it.

Q. What do you mean by that Mr. Boyd?

A. When we found out about this Felix sale we cancelled a lot of the stuff.

Q. Of the Stein-Bloch's?

358 A. We cancelled from everybody.

Q. You cancelled from everybody?

A. Yes sir.

Q. Now just tell the jury what you mean by cancelling?

A. Well, just cancelled.

Q. Excuse me—

A. Just cancelled and notified them not to ship certain amounts or certain parts of it.

Q. As I understand that Mr. Boyd, that means that you had ordered goods from eastern merchants and when you heard of the Felix matter, that they couldn't go on with their sale—

A. When we thought they could.

Q. When you thought they could go on with their sale?

A. Yes.

Q. Then you ordered the merchants from whom you bought the goods not to ship the goods?

A. To cancel a part of them.

Q. I mean in part, and among others you had asked Stein-Bloch's not to send those goods, had you?

A. Yes we did.

Q. Did they send them anyhow?

A. Yes sir.

Q. Do you know whether they received your order not to ship then?

A. They did.

Q. And shipped them anyhow?

A. Yes sir.

Q. Mr. Boyd can you tell the jury about how much the total cancellations were of which you have spoken?

A. They figured fifteen thousand dollars I think altogether.

Q. That is, that you cancelled before you went east to buy goods?

A. Cancelled before Felix had their sale, before they shipped out the fall stuff.

Q. And this trip east then Mr. Boyd was that for the purpose of putting in the kind of goods that you thought would round out your stock for this sale, on that account?

359 A. Yes that is the reason we had the sale.

Q. That is the reason you went east to buy, was it not?

A. Yes sir.

Q. Mr. Boyd please state as to the amount of goods that were actually received into the store as the result of your trip east as compared with the goods that you had ordered cancelled, would it be about the same amount?

A. Some of them didn't ship——

Q. What I mean is, I understand your testimony to be to the effect that you cancelled about fifteen thousand dollars' worth of goods; is that right?

A. Yes sir.

Q. And your testimony is to the effect that you bought between twelve and fifteen thousand dollars' worth of goods?

A. Just about the same amount.

Q. Just about the same amount that you cancelled; you bought on this second trip though a different kind of goods, is that right?

A. Yes sir.

Q. Now what is the custom in the clothing business, if you know, with reference to purchasing goods that are salable in the winter time in the previous spring; is that the way it is done, or in the spring?

A. That is the regular way of business, we buy, you see they make up their stuff; we buy before it is made up. The orders are all made after they are placed you see; we order fall stuff in the spring and spring stuff in the fall.

Q. So that you had ordered your stock for the fall the previous spring, is that right?

A. Yes sir.

Q. And that is what you cancelled before you went east?

A. Yes sir, cancelled them in the summer time. Along in the summer time.

Q. What was the character of the goods you bought on this trip as to its being winter stuff or otherwise?

A. It was winter stuff.

360 Q. Well now at that time of year there wasn't anything left in the jobbers' and manufacturers' hands of winter stock except odds and ends?

A. That is all.

Q. And that is what you bought?

A. Yes.

Q. And you bought that for this sale?

A. Yes sir.

Mr. Robertson: I wish to recall the witness for further *direction* examination.

Mr. Hite: If Your Honor please, I remarked about that very thing and asked that they complete their *direction* examination before I cross examine.

The Court: It will help us very materially if you will get through with a witness before turning him over for cross examination.

Mr. Robertson: I intend to do so, Your Honor, but the custom of the court in examining witnesses makes it difficult for me to have my notes here before me.

The Court: Take a recess of ten or fifteen minutes.

(3:30 p. m.)

Direct examination.

Questions by Mr. Robertson:

Q. Mr. Boyd did you know anything about boxes of merchandise being taken out of that store and sent away during the time the sale was going on?

A. No sir.

Q. Did you know anything about the deal on Christmas Day between Mr. Badders and Fred Voiland for a lot of — out of the store?

A. Yes sir.

Q. You knew about that?

A. Yes sir.

Q. Was you there Christmas Day?

A. I was.

Q. And helped select those?

A. Yes sir.

361 Q. Do you know Mr. Fred Voiland?

A. Yes sir.

Q. How late did you stay there on Christmas Day in that store?  
How late did you stay at night?

A. I don't remember what time it was.

Q. Have any idea of what time it was?

A. I think we got through around mid-night some time.

Q. What do you mean by getting through?

A. He got the stuff out.

Q. Who?

A. Mr. Voiland.

Q. Who took the stuff away from the store, if you know?

A. I don't know.

Q. Do you know the Topeka Transfer Company people?

A. Yes I know them.

Q. Did they take this stuff away?

A. I don't know who it was.

Q. Were you there when that was done?

A. Yes sir.

Q. Mr. Boyd was the bookkeeping and the general business of the corporation conducted upstairs in the main business section or was that handled down in the basement?

A. It was up in the office.

Q. Up in the office; that was on the main business section of the store, wasn't it?

A. Yes, it is upstairs.

#### Recross-examination.

#### Questions by Mr. Hite:

Q. Relative to this Voiland transaction, Mr. Boyd, were you called down to the store Christmas morning to go into that matter?

A. I was there all day, I was called all day.

Q. In the negotiations between Mr. Badders and Mr. Voiland?

A. Yes.

Q. You were present all the time?

A. Mr. Voiland was some place and couldn't get over there, and I went down in the morning and I kept in touch with the store all afternoon.

Q. That was to help select the goods and price them to Mr. Voiland?

A. No it was to get the stuff, I didn't have anything to do with the prices.

Q. You went around with Mr. Voiland and Mr. Badders while they selected the goods?

A. Yes.

Q. And they took them from the various shelves and places where they were kept, is that it?

A. Yes sir.

Q. Now were those goods listed as they were taken?

A. Yes they were.

Q. Kept a regular list of them?

A. Yes sir.

Q. Just as in any other case of any sale?

A. Yes.

Q. Now did you hear Mr. Voiland ask to have those goods delivered at day or that night?

A. I didn't hear him no.

Q. Did he make any suggestion about delivering them as soon as possible?

A. I didn't hear him.

Q. Did you hear any conversation with reference to when they would be delivered?

A. No I didn't hear any of the conversation about it at all, except what they wanted.

Q. Just what they wanted?

A. Yes.

Q. With reference to getting those goods out at night I will ask you to state Mr. Boyd if it was not talked of between you and Mr. Badders there it was your expectation those goods would be gotten out that morning but Mr. Voiland didn't get over?

A. I spent the whole day all Christmas, I remember, waiting around there to do it and Mr. Voiland didn't come.

Q. Was Mr. Voiland expected there in the morning and  
363 didn't get over?

A. I think it was about ten o'clock in the morning that I went down.

Q. And that was the time Mr. Voiland was expected?

A. Yes sir.

Q. And he didn't get there until night?

A. He was some place I don't remember where he was.

Q. Do you recall the circumstance of Mr. Badders calling Mr. Voiland up and telling him he guessed he would have to let the matter go over until morning?

A. I don't know whether he did or not, he called him up two or three times, wanted to know when he was going to come, he would call up Mr. Voiland.

Q. You don't remember——

A. I don't remember the conversation.

Q. You don't remember what was said?

A. No.

Q. Did Mr. Badders say to you unless Voiland got there pretty soon — have to let the thing go over until morning?

A. Called up my house and told me that.

Q. Called you at your house and told——

A. He didn't call me up, I called him up and asked him when we was going to do it, it was getting late, and he said if he didn't come pretty soon — have to let it go.

Q. State Mr. Boyd whether the fact this transaction took place in the evening was Mr. Voiland's delay, or due to anything that Mr. Badders requested?

A. That is what I understood.

Q. Understood what?

A. Mr. Voiland couldn't get over there, that was the reason.

Q. That was the cause of the night transaction, and not what Mr. Badders asked?

A. That is what I understood.

Q. Who else was present when these goods were selected and packed for Mr. Voiland?

A. Why I don't remember his name, he worked for Mr. Voiland.

Q. One of Mr. Voiland's men?

364 A. Yes and there was two drivers there.

Q. Two drivers.

Q. For the Transfer Company?

A. And Mr. Voiland and Mr. Badders and myself.

Q. Was there any secrecy about that Mr. Boyd?

Mr. Robertson: Object to that as calling for the conclusion of the witness.

The Court: State what was done.

Mr. Hite:

Q. Was this done openly or otherwise, the selection of the goods?

A. I don't see how it could be done secretly.

Q. Now you have been asked about this basement as to whether the bookkeeping department was upstairs; the basement is finished, is it not, Mr. Boyd?

A. Yes.

Q. Walls plastered?

A. Yes sir.

Q. Painted?

A. Yes sir.

Q. Is that the fact?

A. Yes.

Q. It is brightly lighted with electricity, is it not?

A. Yes sir.

Q. And is a part of the store used for surplus stock, was it not?

A. We sold stock out of the basement too.

Q. You sold stock out of the basement?

A. We had the work clothes and all that stuff down in the basement.

Q. Take customers down there and show goods and make sales right there?

A. Yes sir.

Q. During this time that you are speaking now about the Voiland transaction, some of the better class of clothing was kept down stairs in the cellar out of the sale?

A. Yes sir.

365 Q. State whether or not that was the customary thing in sales of this character?

Mr. Robertson: Objected to as argumentative.

The Court: Sustained.

Mr. Hite: Except.

Q. Do you know what the custom in that respect is Mr. Boyd, about taking the better class of goods out of a stock when putting on a sale like this?

Mr. Robertson: Objected to as not cross examination.

The Court: I don't know as the custom has much to do with it. Answer the question.

Mr. Robertson: Answer yes or no.

The Court: Do you know what the custom is?

A. In some instances it is one way and some another, owing to what kind of a sale you put on.

Mr. Hite:

Q. What is the custom in this kind of a sale.



Mr. Robertson: Objected to as incompetent, irrelevant and immaterial, not cross examination.

The Court: Sustained.

Mr. Hite: Your Honor will permit me a word; I will say the witness was interrogated about the removal of some goods there and what he knew about it.

Mr. Robertson: Inasmuch as the counsel insists upon being so technical it is not cross examination on the direction examination either.

The Court: You asked this witness as to how it was taken out; he has answered, and as to what occasioned the delay and everything of that sort.

Mr. Hite: That is not the point of my inquiry; it is that it is quite customary in sales such as this was to take the higher priced goods out of stock offered for sale and put them down in the basement; that goes to the intent here.

The Court: Answer.

Q. Do you know anything about any custom of that kind?

A. Yes sir.

366 Q. Now with reference to sales of this character Mr. Boyd is it the custom to take the highest priced goods out from the main selling place and put them so the customers won't see them.

A. Yes sir.

Q. That is the usual practice is it?

A. Yes sir.

The Court: That is done for the purpose of exhibiting only the goods that you are going to sell of an inferior character, that it?

A. Yes sir.

Redirect examination.

Questions by Mr. Robertson:

Q. Did you ever know of that being done for the purpose of shipping the goods away to fictitious names of persons?

Mr. Hite: Objected to as incompetent, irrelevant and immaterial.

The Court: That objection should be sustained.

Q. Were you present when Mr. Voiland paid Mr. Badders for these goods?

A. I don't think so; if he did it there while I was present, I didn't see it.

Q. You didn't see it?

A. No sir.

(Witness excused.)

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A. G. DUNHAM, called as a witness on behalf of the plaintiff, having been first duly sworn, testifies as follows:

Direct examination.

Questions by Mr. Brady:

Q. Mr. Dunham, were you sworn?

A. Yes sir.

Q. What is your name?

A. A. G. Dunham.

Q. Where do you live?

A. Shreveport, La.

Q. Formerly lived in Topeka, Kansas?

A. Yes sir.

Q. Acquainted with George Badders, the defendant?

A. Yes.

Q. And what was your business during the months of November and December 1913 in Topeka, Kansas?

A. I was reporter for the Bradstreet Agency at Topeka.

Q. And did you call upon Mr. Badders in a business way in relation to your Bradstreet business?

A. Yes sir.

Q. And how often did you call upon him?

A. I think only twice that I have any distinct recollection of.

Q. Have you any means of fixing the dates of one of your calls upon him?

A. Yes sir.

Q. Have you a report now in your possession.

A. Yes sir.

Q. Produce it?

A. These are official records, will certified copies be all right?

Q. I hand you Exhibit No. 38 and ask you to state what that is?

Mr. Harkless: That shows for itself what it is.

The Court: Answer what it is.

A. It is a statement in answer to questions I put to Mr. Badders November 28, 1913.

Q. Were those his answers to your questions recorded on that day at that time?

A. Yes sir.

Q. In his presence.

A. Yes sir.

Q. And immediately upon his answering them?

A. Yes sir.

Q. After you had completed the statement as it now is was there anything said about his signing it?

A. Yes, sir; I asked him to sign and he said he didn't care to.

Mr. Harkless: Your Honor, now this statement of what this witness may have written down in reference to some conversations is wholly incompetent as against this defendant, purely hearsay.

The Court: Well I don't see if he is able to state more definitely as to what occurred, that the paper he has in his hand is perfectly competent to prove what was said at that time, and if he has this paper in his hand, which he says is a correct statement of the questions and answers put to the defendant at that time, I do not see why it may not be quite as competent as any other statement he might make according to his recollection.

The Court: Did you write the questions and answers?

A. No sir, I wrote the answers after he answered the questions.

Q. You wrote the answers in the paper you have in your hand, the correct answers he made to the questions at the time?

A. Yes sir.

Mr. Brady: We offer Exhibit No. 38 in evidence.

Mr. Harkless: We now object—

The Court: Overruled.

Mr. Harkless: Will Your Honor let me state it, I have not stated it.

The Court: Yes, go on and state it.

Mr. Harkless: We are objecting to the offering in evidence of Exhibit No. 38 for the reason that it is, first, purely secondary evidence, and a private memoranda made by a party not to the litigation of what he says happened in a conversation; that it is never competent to offer the memoranda in evidence where the witness had had the conversation to which he can testify.

The Court: Suppose you ask him the questions then?

Mr. Harkless: I am not through with the objection Your Honor.

The Court: I will fix it so you are through.

Mr. Harkless: No you are not.

369 The Court: In these questions there, I asked him whether he wrote it down at the time and he said yes, and from this paper he can tell exactly what he said, and whether that paper refreshes his memory as to what he said, he may use the paper for that purpose.

Mr. Harkless: But it is offered in evidence. I object for the further reason that any statement that may have been made by Mr. Badders to these parties is wholly immaterial in this case, for any reason, having been made to a third party, and has no connection whatever with any communication made to any of the creditors in this case.

The Court: The objection is overruled.

Mr. Harkless: We except.

The Court: Yes sir.

Mr. Harkless: We are even Your Honor, that is all I can do.

Mr. Brady, commencing to read Exhibit No. 38.

Mr. Harkless: I understand Your Honor to rule that this witness might only use this memoranda for the purpose of testifying and not to put it in evidence itself.

The Court (to the witness): Read that paper and see whether or not your recollection of the transaction is refreshed now by reading that paper as to what actually occurred?

A. I believe so.

Q. Do you say that these answers were written down in his presence at the time?

A. Yes sir.

Q. And in answer to certain questions that were put that are in that paper.

A. Yes.

Q. And he answered as you have written them?

A. Yes sir.

The Court: Read it.

Mr. Harkless: I still object, Your Honor, to the introduction of the paper in evidence notwithstanding all said in reference to it.

Your Honor, as I understand, has held——

370 The Court: I am ruling now.

Mr. Harkless: I except to Your Honor's ruling now.

The Court: I will allow the exception. Go on and read the paper. Witness, reading, November 28, 1913.

The Court: You may put down in this report, this witness had identified this paper that he now proposes to read, or that is offered in evidence, and that this particular paper that he has is a correct statement of what occurred between him and this defendant at that time. Read the paper.

Mr. Harkless: To which we except.

Witness, reading, as follows:

"Date Nov. 28, 1913.

Statement made by G. S. Badders, corporate style Badders Clothing Co. Name of City, Topeka, County, Shawnee. Street and number, 701-3 Kansas Avenue. State of Kansas. President George S. Badders. Residence, Topeka. Vice President, W. A. Byers. Residence, Topeka. Secretary and Treasurer, Ira W. Burdick, Residence, Topeka. Manager George S. Badders. Residence, Topeka. Directors, George S. Badders. Residence, Topeka. W. A. Byers. Residence, Topeka. Ira W. Burdick, residence, Topeka. Robt. Stone, residence, Topeka. R. B. Badders, residence, Topeka. Authorized capital, sixty thousand dollars. Paid in capital, sixty thousand dollars. Assets. Cash on hand and in bank, two thousand dollars. Bill receivable twenty five thousand dollars. Accounts Receivable eleven thousand dollars. Merchandise and Fixtures fifty three thousand dollars. Total Assets, ninety one thousand dollars. Liabilities, bills payable, six thousand dollars; accounts payable, twenty nine thousand dollars, total liabilities thirty five thousand dollars. Bank with Bank of Topeka." That is all.

Mr. Harkless: I would like to ask the witness a question, Your Honor, relative to this offering, and as a part of the objection.

Q. Is that the original paper?

A. Yes sir.

Q. And it is written in pencil, is it?

A. Indelible pencil?

Q. Did you write it?

A. I did sir.

Q. Where has it been since that time?

A. Since this was written?

Q. Yes?

A. Well after I wrote the statement in the ordinary course of handling our work it is sent to our Kansas City office, and used there, and I believe it has been there ever since until I was instructed to get it.

The Court: Go on with your questions.

Questions by Mr. Brady:

Q. And you secured that information for the benefit of Commercial Agencies to notify persons selling goods to such a firm?

Mr. Harkless: That is objected to as wholly immaterial, what he obtained it for.

The Court: The agency that you represent, what is the agency you represent?

A. Bradstreet.

Q. Bradstreet?

A. Yes sir.

Q. Is that agency employed in getting information, such as this, from different merchants all over the country for the purpose of advising creditors and others?

A. Yes sir.

Q. That recognized by this defendant at the time you talked to him; he knew what you were doing?

A. I believe so.

Q. You tell him you were a representative of this agency?

A. I did sir.

Q. And after telling him what you were doing he made that statement?

A. Yes sir.

Questions by Mr. Brady:

Q. Did you have any further conversation with him in reference to the twenty five thousand dollar increase in the capital stock?

372 A. Yes sir.

Q. I wish you would state to the jury what that conversation was?

A. I asked him who subscribed for it and he stated for business reasons the parties—

Mr. Harkless: Is that outside the statement he furnished to creditors, that is not in this statement?

A. It was a conversation.

Mr. Harkless: Object to any private conversation between Badders and this gentleman as in no way communicated to these parties, it is not in this statement.

The Court: Suppose it is not in this statement; suppose he had a

separate and independent conversation with this man about who owned that stock, ain't that competent?

Mr. Harkless: No sir.

The Court: I say it is and I overrule your objection.

Mr. Harkless: Except.

Mr. Brady: Go on and state what he said?

A. I asked him who subscribed for the additional twenty five thousand paid in capital and he stated that for business reasons the parties that had subscribed for that didn't care to have their names known.

Q. Did he say the person or persons who had?

A. To my best recollection he used the plural, persons.

Q. Did he tell you in that conversation where they resided?

A. No I didn't ask that question because there was nothing to show who they were so I didn't ask him where they resided.

Q. Did you learn in that conversation anything about any dividends being declared or what salaries had been paid?

A. I asked no questions in reference to that.

Q. And know nothing about that?

A. No sir.

#### Cross-examination.

#### Questions by Mr. Harkless:

Q. Mr. Dunham, this statement was made on November 28, 1913, was it not?

373 A. Yes sir.

Q. These statements of figures here were given as being correct of what date?

A. An estimate of that date.

Q. What date?

A. November 28, 1913.

Q. How do you know?

A. Because they were not from an inventory.

Q. What?

A. They weren't from an inventory, if from an inventory it would be noted there.

Q. Well did you see the inventory?

A. No sir.

Q. Well how do you know these were from an inventory?

A. I say they are not from an inventory.

Q. What were they from?

A. An estimate.

Q. A mere estimate of what this stuff was worth, is that it?

A. An estimate, yes sir.

Q. Well did you tell your creditors when that report went in that was an estimate only?

A. I believe in the report it would show an estimate.

Q. Well did you report it to your people as being merely an estimate and not a statement of any facts?

A. I believe it was reported that way.

Q. You do?

A. Yes sir.

Q. And you understand it to be then just that?

A. To be an estimate.

Q. Yes? Now where do you say this statement was made?

A. In Mr. Badders' store.

Q. Did you make a report, a copy of this to the Dunn company?

A. No sir.

Q. Did you ever communicate to the Dunn Agency what you had done in reference to this?

A. I don't recollect any conversation with the Dunn people in reference to the statement.

374 Q. Well now after you made this statement out did you show it to Mr. Badders?

A. I sure asked him to sign it.

Q. That is not what I asked you; did you show it to him after you had completed it?

A. Yes, I handed it to him to sign.

Q. Well did he look over it?

A. I believe he did.

Q. Well, what do you know about it?

A. In the natural course of business, after a man answers those questions I hand him the blank to sign.

Q. You wrote his answers down with a pencil?

A. Yes sir.

Q. And I say, after you got those estimates from him did you hand the paper back to him and did he look over this to see whether you had written them correctly or not?

A. I am not sure whether he looked over the statement or not.

Q. Well he didn't pay much attention to your statement; this was not signed by him?

A. I asked him to sign it.

Q. He told you he wouldn't sign that statement?

A. He said he didn't care to.

Q. Didn't he say he wouldn't sign such a statement as that?

A. No, he said he didn't care to.

Q. You wanted him to sign an estimate you had figured out?

A. I wanted him to sign a statement of his answers to the questions I had asked him.

Q. And after making these estimates he said he wouldn't sign it?

A. I didn't make the estimates, he made the estimates.

Q. After you had written them down, he said to you, I won't sign that, didn't he?

A. I believe he said he didn't care to sign it, is my recollection.

Q. Well it is the same thing; now, when you made a report—I will ask you if you didn't make a report in the matter, in addition to what is in here, to your own people?

375 A. I made some typewritten notes to go with that.

Q. After you got this statement you went off and sat down and wrote up something of your own and sent in to your house?

A. I made some notations to add to that.

Q. Answer my question; is there any notations on there, to be added in, such as you afterwards wrote down on the typewriter?

A. I have the notations that went with that.

Q. Have you?

A. Yes sir.

Q. Where are they?

A. In my pocket.

Q. Then this is not all of it?

The Court: Let me understand. After this statement was made, you meant that you wrote a report on that to the office?

A. It is necessary for them to make a foundation for the report they write in the office.

Q. That is the usual customary thing, after you get the statement to make a report to the head office.

A. This is the notation I made at the time.

Mr. Harkless:

Q. That is, after you get the facts from him you go off and write up some opinion of your own, don't you.

A. That is part of it, the statement is part of it.

Q. Well, I ask you Mr. Dunham, let's see what we are talking about; this statement has nothing on it, on the face of it at all except some figures has it?

A. That is all and answers to direct questions.

Q. Now then after you get that you went off and wrote up a type-written opinion of your own about some matters?

A. Just added some notations.

Q. And added it to this?

A. That is the paper attached to it.

Q. This one here?

A. Yes sir.

Q. Well now he didn't give you this?

376 A. No sir.

Q. Now I will ask you if you didn't write up in the opinion that these figures are honestly given?

A. No sir.

Q. You didn't do that?

A. I don't have any recollection of that; it is on that paper what was stated, my part of it.

Q. Let's see, you are the Bradstreet representative?

A. Representative of Bradstreet.

Q. Look at that and see if you ever saw that?

Mr. Hite: Get the original from the government.

Mr. Harkless: Have you the original of that report? Did you ever see that thing?

A. Never saw this before.

Q. Will you read it over and see?

A. That first sentence I don't have any recollection of using at all.

Q. Don't discuss the sentence, just look it over and see whether



or not your company sent that out? And if that is not the thing the creditors got and never saw this?

A. This is not the same as I sent it into Kansas City.

Q. Now isn't it true that the stuff you got here never went to any creditors or to your house even?

The Court: I understand the District Attorney is not insisting this particular statement ever went to anybody. Mr. Robertson?

A. No sir.

The Court: That ends that.

Mr. Harkless:

Q. And that it was never communicated to the creditors, do I understand you to concede that?

Mr. Robertson: I don't claim any creditors ever saw that original statement.

Mr. Harkless: Or one like it or a copy of it?

Mr. Robertson: No.

The Court: As I understand Mr. Harkless, the paper is 376½ introduced for the purpose of showing the conversation between this defendant and himself, and that it didn't go to any creditor who might see it at all; as I understand, the position of the District Attorney is that this paper, as such, was never sent to creditors; it was only introduced for the purpose of showing the conversation that took place between this witness and the defendant.

Mr. Harkless: That being true. Your Honor, we again ask to exclude both of these papers for the reason that it is clearly shown that nobody ever received it, ever relied upon it, trusted to it or acted upon it, or intended to act upon it, it is absolutely immaterial in this case.

Mr. Hite: Your Honor, permit me a word. My understanding is, I caught it perhaps imperfectly, that this was offered to show that this was the basis upon which this clothing company and Mr. Badgers, the defendant, were asking credit; now may be I am mistaken about that.

The Court: If the court understands the question, it was only done for the purpose of showing a conversation as to the matters that it stated there between this witness and the defendant, and no one else saw it.

Mr. Hite: I understood, Your Honor, that the purpose covered by Your Honor's questions to the witness, as well as the United States Attorney's questions, was, this was a statement made to a mercantile agency to form the basis of credit, and if I am mistaken about that I would like to be apprised of it; if it is merely for the purpose of disclosing the declarations made by the defendant, then I am not speaking to the point, but if this paper is offered in evidence, or the testimony of this witness, for the purpose of showing statements made by this defendant as a basis of credit, then I think the objection to the testimony is well taken.

The Court: I think you are quite right, and the court understood all the time this is an independent conversation represented

by this paper, that took place between this witness and this defendant only, and that is all there is to it. And when you say  
377 Mr. Harkless, that nobody was interested in it, I don't understand that the government or any one else can prove any conversation that took place between any witness, whether a merchant or not, and this defendant, to prove what the condition of that concern was. That is all the point there is to this inquiry.

Mr. Robertson: And this one further thing, Your Honor, this conversation is also important as bearing upon the question of the increase of the capital stock, and showing what the scheme was.

The Court: This testimony here offered now is for the purpose of showing a conversation between the defendant and this witness as to what that stock consisted of and who it belonged to.

Mr. Harkless: Don't show what it consisted of nor who it belonged to.

The Court: Said it belonged to those whose names he didn't see fit to give; no use getting into a discussion about a matter, and not going to draw any inferences here, nor will the court draw inferences from the testimony; the only question for the court to pass upon is the competency or incompetency, and I hold it is perfectly competent to prove by this witness a conversation had with this defendant in reference to the business of this concern.

Mr. Harkless: If it is material.

The Court: It is material, and I hold it so and your objection is overruled.

Mr. Harkless: Except.

The Court: Of course you do; that is understood all the time.

Q. Now Mr. Dunham didn't Mr. Badders expressly state to you in reference to this twenty five thousand dollar note, in that conversation, how that was paid up?

A. Don't quite catch what you have reference to.

Q. Didn't he tell you that capital stock was paid up by that twenty five thousand dollar note.

A. I don't remember the conversation that way.

Q. Well, was the twenty five thousand dollar note referred to?

378 A. It was.

Q. Where is it in this statement?

A. Bills receivable twenty five thousand dollars.

Q. This is it, isn't it?

A. Yes sir.

Q. Now then didn't you know at that time that that was a note?

A. I don't know that I did; I asked the question and he said it was bills receivable.

Q. Well but didn't he tell you that it was a twenty five thousand dollar note of his own to the company?

A. Not of his own.

Q. Who did he tell you it was?

A. He said for business reasons people didn't care to have their names known.

Q. Well did you report that in your report; why didn't you say so in your report?

A. I don't believe that was stated in my report.

Q. Of course it isn't. Now is there anything else there he told you that is not in that report?

A. I don't believe so.

Q. Now Mr. Dunham, isn't it a fact that the agency furnishes you with some kind of a printed form; you went there with a printed form made up that they send out, had it in your pocket and you have got to conform to that in making your reports.

A. Yes sir.

Q. And if the thing is of such nature outside of it, and other statements you hear are too voluminous to put in those answers, you don't put them in?

A. That is answers to questions to the man himself.

Q. I understand it; I say if his answers are too long for him to put in, you don't put them in there do you; you just put down the numbers or figures he give you and don't give the conversation you had with him at all, isn't that true?

A. There wouldn't be anything else go in there but the figures.

Q. That is what I say; all the talk and conversation you had with him on that occasion none of it is contained in here at all except figures, isn't that a fact?

379 A. What conversation do you mean?

Q. Didn't you have some talk with him?

A. I most assuredly did.

Q. Well there is none of the talk or what he told you in here at all except figures?

A. There wouldn't be anything go on that but the statement part.

Q. That was your trouble; you couldn't put anything else but that on it, could you, and didn't intend to?

A. The blank is not made for anything else but that.

Q. Certainly, you are concluded by your blank; then you go over, after you get these figures to fit your blank, then you go over and sit down and make up some kind of a typewritten report, after you left the party, and send to your house, and tell them something else that does not appear here?

A. No.

Q. You do do it?

A. That report you have here is not the same I have here.

Q. I am talking about the one you say you sent in?

A. That one I sent in.

Q. And you had another little instrument here?

A. That I sent in.

Q. That was not taken in the presence of Mr. Badders?

A. No sir.

Q. You went off somewhere else and wrote up something else and sent it in?

A. Yes sir.

Q. Did you discuss the question with him as to the liabilities that weren't due?

A. I don't believe that question was put specifically that way.

Q. Well you got a list of liabilities here, look at them a moment.

A. They were not due then. Bills payable and accounts payable that is the way the question was put to him.

Q. Well did you find out whether those accounts payable were due those commercial accounts?

A. I don't believe that question was asked.

380 Q. You didn't find out about that; you don't know whether he owed a single dollar from his statement that he made at that time that was due?

A. No.

Q. As far as you know from the statement he made there wasn't a dollar that he owed that was due, ain't that correct?

A. Not that I know anything about.

The Court: Well, so that we may ask the question and have it understood:

Q. You asked for his assets and liabilities, did you?

A. Yes.

Q. And this paper that you produce here is a statement made by him as to what his assets were and his liabilities, is that true?

A. Yes sir.

Mr. Harkless:

Q. Do you know whether Mr. Badders in this statement to you was considering liabilities at that date, November 13th, as covering accounts that were not due, or accounts that were due?

A. Do you want my impression?

Q. No impression about it, do you know whether he said anything about that?

A. If anything were due or not?

Q. Yes? Do you know whether he was telling you those were bills payable that were due, and he only included in the statement bills that were due, do you know whether he did or didn't from your own knowledge?

A. The question was put to him, what was he owing for borrowed money.

Q. Was it? Hold on, let's see whether you are right about that.

A. Bills payable.

Q. Bills payable, yes, anything there about due or not due?

The Court: What difference does it make whether due or not due?

Mr. Harkless: Your Honor, with all due regard to the court—

The Court: If a man asks a man what his liabilities are and he says I owe twenty five thousand dollars, and that is all I owe; 381 now the question is, is there any point about whether it is due or not?

Mr. Harkless: Your Honor, many merchants in the country, considering and speaking about their liabilities, they are speaking of what they are liable for at the date of the statement, as to whether claims are due, that are pressing, as distinguished from—

The Court: I understand this witness to say there was nothing

said in this conversation as to whether any of these accounts were due or not due.

Mr. Harkless: I think I have proven that.

The Court: What else is there to keep up all this talk about?

Mr. Harkless: I have not said there was anything else. I am through with it.

The Court: Try and get as little confusion into this matter as we can.

The Court: Some one has suggested it would be an accommodation—are you through with this witness or not.

(Witness excused.)

The Court: Some one has suggested it would be an accommodation to some gentlemen who are witnesses that live at Topeka, to take a train and leave at four o'clock; I had intended to hold court until five o'clock, and they ask for a few minutes to get to the train, that they might go there, and I am going to accommodate them by stopping here.

(To the Jury) I hope you gentlemen are having a fine time where you are. And if this marshal is not taking good care of you I want to know it; and I want him to furnish all the facilities that he can for your comfort, and I want him to give you all the opportunities you or any of you may desire tomorrow to go to Church, and the marshal or some of his deputies may take charge of part that want to go to one church, and the part that may prefer to go to another, and some of you may not desire to go at all, I don't know, can't always tell by looking at a man whether he is a regular church member or not. So we will be back here Monday morning and go into this trial, and I am going to hold down until we get through with, go on through with it as soon as we may. I know it is a great inconvenience to be away from your home and your families but it is only now and then you are called upon to discharge such important duties as you are now. I want you to be comfortable, and they will make you so, that is all there is to it. Adjourn court until ten o'clock Monday morning.

(At Chambers, before the Court, Monday Morning, January 25th, 1915, ten o'clock A. M.)

Thereupon, counsel for defendant present to the court their written application for continuance, as follows:

In the District Court of the United States for the District of Kansas.  
First Division.

No. 4160.

UNITED STATES OF AMERICA, Plaintiff,

v.

GEORGE S. BADDERS, Defendant.

*Application for a Continuance.*

Now, again, on this January 23rd, 1915, comes the defendant, by his counsel, and shows to the court as follows:

### I.

That, on January 9th, 1915, this defendant duly filed in this court and cause his petition to postpone the time of the trial of this action, and, among other things, therein alleged that George A. Clark, claiming to be receiver of the property of the Badders Clothing Company, on January 30th, 1914, took possession of certain books, papers, accounts, bills, invoices, correspondence and other property and effects belonging to said Badders Clothing Company, including correspondence with a large number of Eastern wholesale houses, during the period beginning with the latter part of the year 1911, and down to January 21st, 1914; that, by reference, the allegations in said petition relative to said books, papers, accounts and correspondence, are made a part of this application.

### II.

That, on or about Wednesday, January 20th, 1915, this Court made and entered an order directing the said George A. Clark to produce the books and papers referred to in said petition, at the Federal Court house in Kansas City, Kansas, and that the defendant herein and his counsel have full and free access to the same for the purpose of sustaining the matters alleged in said petition; that on this day, to-wit, Saturday, January 23rd, 1915, at about 10 o'clock in the forenoon, came the said receiver as a witness for the plaintiff herein, and testified, among other things, that he had packed all of the books and papers referred to in said petition in two packing cases, and stored the same in an office occupied by him until July 1, 1914, and since used by him for storage purposes, which testimony relative to said packing and storing of said books and papers was at the time taken in shorthand by the stenographer reporting this case, and is hereby referred to as a part of this application; that the said George A. Clark further testified at said time that he had made search for the said packing cases containing said books and papers, and was unable to find them, and asserted that they were stolen, and that this search which he had made in obedience to the order of the

court was the first information he had that they were not there; and further stated that he knew of the fact that the defendant herein, on January 9th, 1915, had filed said petition for postponement of the time of the trial of this action.

### III.

Thereupon, this defendant respectfully shows to the court that the said books, papers, correspondence and other data were selected out of the residue of books and papers then in the hands of said George A. Clark, some time about April 16th, 1914, and the said George A. Clark was by the defendant's counsel specially requested to carefully preserve the same; that, at the time this defendant made such request for the special care and preservation of said books, papers and data, this defendant had been informed against and  
384 was then under bail to appear and answer the charge of using the mails in aid of a scheme or device to defraud, which subsequently, on or about April 22nd, 1914, ripened into the indictment in this action, and at said time the Grand Jury of the United States which subsequently found the indictment herein, was in session considering the charges against this defendant.

### IV.

The defendant says that the books, papers and other data herein referred to as contained in said packing cases, and so selected by this defendant for preservation, consisted in part of the following:

(a) Daily reports of the business of the Badders Clothing Company, showing cash sales, collections, charges of amounts of merchandise received daily from wholesale houses, and classified as to clothing, furnishing goods, hats, caps, children's clothing, children's furnishings and similar matters; also amounts of money in bank at various times, amounts of deposits, amounts checked out and the purposes for which such checks were made, daily balances and similar data.

(b) Monthly reports made to Stein-Bloch Company; also to Alfred Decker & Cohn, showing in detail the exact condition of the business as to merchandise received, merchandise sold, profits, thereon, condition of the bank account, expenditures, cash on hand, and other similar matters.

(c) Comparative statement book showing the daily, weekly and monthly condition of the business of said Badders Clothing Company, comparing the same with previous weeks and months since the Badders Clothing Company began business under that name, and since the connection of this defendant therewith.

(d) Duplicate copies of all orders for clothing, furnishing and similar goods, showing in detail the sizes of the same, style, quality, quantity and wholesale price, as to each kind of articles; orders made in the spring showing goods ordered for fall, and orders made in the fall showing orders for the spring.

(e) Swatches of cloths, showing color, quality, etc., of all suits

and overcoats of all kinds and descriptions carried or expected to be carried in stock by said Clothing Company.

(f) Stock books showing in detail each shipment of goods received, from whom received, with lot number of the goods, cost price, selling price, character of the merchandise, whether clothing, hats, caps, neckwear, underwear, shirts, vests, collars, jewelry, handkerchiefs, mufflers and the like, the exact number of each article received, from whom received and by whom manufactured, together with the terms of sale, terms of payment, as to when same would become due and also discounts.

(g) Sales slips, showing each individual sale during the sale referred to in the indictment herein of December, 1913, by days, weeks and total for the whole time.

(h) Cashier's charge slips for each day during the entire period of this defendant's connection with said Badders Clothing Company, showing charges to each account for every article of merchandise, whether sold in bulk or otherwise, leaving the storeroom of said Clothing Company, whether sold for cash or thereafter to be accounted for, or accounted for by cash sale slips.

(i) Also complete records and data covering goods ordered for sale by said Clothing Company in the fall of 1911 similar to the alleged sale referred to in the indictment herein, showing goods ordered for both of such sales, the amount thereof, the quality and character, from whom purchased, by whom manufactured, terms of sale, as to when the same would become due, with discounts and the like.

(j) Original invoices received from wholesale houses with whom said Clothing Company dealt, covering the periods of the two sales referred to herein, one in the fall of 1911, and the other in December, 1913, referred to in the indictment herein, which original invoices were furnished to said Clothing Company by said persons, firms and corporations with whom it dealt, and contained full and complete data as to the articles sold, the prices thereof, the terms of sale, amount of discounts and when the amount of such purchases would become payable, and the same were furnished by said wholesale houses to said Clothing Company with reference to the receipt of goods purchased by said Clothing Company from such wholesale houses, and also containing the retailer's selling price noted thereon by the defendant herein opposite the wholesale price appearing on said invoices, as to each article therein mentioned.

(k) Correspondence covering the period of the two sales herein mentioned, between the said Clothing Company and the persons from whom it purchased goods, showing orders and changes therein, cancellations of orders, directions concerning time of payment, mode of shipment, and other data relating to the dealings between said Clothing Company and those with whom it dealt, including some of the persons, firms and corporations mentioned in the indictment herein; from which correspondence will appear that the dealings by said Clothing Company with the persons, firms and corporations from whom it purchased goods, were the same in respect of the sale



referred to in the indictment to a previous sale of the same general character held by said Clothing Company in the fall of 1911.

## V.

And, thereupon the defendant avers that the aforesaid documentary evidence would demonstrate in the trial of this action that the dealings and transactions between the Clothing Company and its creditors, during the time of this defendant's connection with said Clothing Company, were freely and openly stated and communicated to said creditors, and from which it would appear that they were conversant with substantially all of his dealings and transactions, for that it will appear from said data that, at the request of the Stein-Bloch Company, said Clothing Company furnished daily reports to said Stein-Bloch Company of its condition, business and sales, and with the consent and by the direction of the said Stein-Bloch Company, referred all persons with whom said Clothing Company dealt in the purchase of goods, to said Stein-Bloch Company for information concerning the financial condition, business and affairs of said Clothing Company.

## VI.

And thereupon the defendant further shows to the court that upon this date, for the first time, he learned of the loss, 387 through no fault, negligence, or act on his part, of the said packing cases containing said books, papers and data, and, for want of time, is unable to investigate fully and determine the means by which the evidence appearing upon the face of such papers hereafter may be supplied; that no opportunity yet has been afforded the defendant on his own account to make search for the purpose of discovering the whereabouts of the said packing cases, books and other data, and for want of time the defendant has been unable to make such search; that the defendant, having filed his said petition for postponement of the trial, because, among other things, he desired to examine and have produced in evidence said data, on January 9th, 1915, confidently relied upon the assurance that the same would be produced for his inspection, and were in the hands of said George A. Clark; but the defendant avers that, in the event said documents are lost beyond recovery, then this defendant, as to some of the matters herein referred to believes that he can supply such loss by the testimony of wholesale houses with whom said Clothing Company dealt, in whose possession your defendant would expect to find, and believes that he would find, original letters from said Clothing Company to such wholesale houses, the copies of which are in said packing cases; also copies of invoices or data from which copies could be made up, daily and monthly reports made by said Clothing Company to some of its creditors and persons with whom it dealt, and particularly the Stein-Bloch Company, of Rochester, New York, and Alfred Decker & Cohn, of Chicago, Ill.; and, also, by diligent inquiry of former employes of

said Clothing Company and of other persons, supply portions at least of the lost information contained in some of the documents herein referred to.

## VII.

The necessity for the attendance of the defendant upon the court during the entire progress of trial, if the trial is now proceeded with, renders it impossible for this defendant personally to give attention to a proper search for said packing cases, books, papers and data, which defendant believes by diligent search may be located  
388 and found; that defendant is now setting on foot, through a detective agency, an exhaustive search for said missing documents, and hopes and believes that they may yet be found; that until they are found or their irretrievable loss established, this defendant cannot safely proceed with the trial of this case, either with respect to the cross-examination by his counsel of witnesses produced by the plaintiff or in the preparation of his defense; and, on the other hand, that if it be established that said packing cases, books, papers and data cannot be found, this defendant cannot safely proceed with the cross-examination of the plaintiff's witnesses in respect of the transactions of said Clothing Company or in the preparation of his defense, or the procuring of his evidence without the data afforded by the testimony hereinbefore referred to, which this defendant would have to take to supply such loss.

## VIII.

And thereupon this defendant further shows to the Court that, unless time and opportunity is given to find the said books, papers and data contained in said packing cases so claimed to be lost by the receiver appointed by this Court in another case in bankruptcy, or to supply secondary evidence establishing the contents of such lost or mislaid documents, if this trial is now proceeded with, this defendant may be forced, by the situation in which he has been thus placed without fault on his part, to waive his constitutional privilege of refusing to testify in the course of this trial, and be compelled to go upon the witness stand to establish the contents of writings which the defendant believes can either be produced within a reasonable time, or their contents supplied by secondary evidence obtainable in the manner and circumstances hereinbefore related, and thus be deprived of the testimony hereinbefore mentioned or forced to go upon the witness stand himself, and, if forced to go upon the witness stand himself, be deprived of the corroborative force and effect of the contents of said documents.

Now, in this situation, this defendant claims and asserts the protection of the Constitution of the United States, and particularly that part of the 4th amendment declaring that no  
389 person shall be compelled to be a witness against himself, and which protects this defendant from furnishing any information or testimony which might tend to criminate him, and which affords this defendant the right that his failure to go upon the witness

stand shall not be interpreted or construed, directly or indirectly, as any evidence of or as having any bearing upon the question of his guilt or innocence, and protects this defendant against being deprived of his liberty and privilege without due process of law, and saves to this defendant his privileges and immunities as a citizen of the United States.

### IX.

This defendant further avers that this application is not made for the mere purposes of delay, but is made in good faith and solely for the purpose of enabling him properly to prepare his defense against the charge contained in the indictment herein, and to have a fair and impartial trial of the issues presented by said indictment, and a full and fair opportunity to make his defense thereto.

### X.

This defendant further says that he believes that, if the trial of this action be postponed for a reasonably sufficient time to enable a proper search for said missing books, papers and data, to be made the same may be discovered, and, in the event that it be ascertained that they cannot be found, for an additional reasonable time for this defendant to procure secondary evidence of their contents so far as possible, that he will be able to supply in the main, and to a great extent at least, the testimony the benefit of which he is deprived by the sudden and unexpected event that said books, papers and data would not and will not be now produced by said George A. Clark under the order of this Court.

Wherefore, the defendant respectfully prays that this Court postpone this trial for a reasonable time, to enable the defendant to prosecute a search for said missing documents, which defendant  
390 intends to make for the purpose of discovering the *the* same, and in the event, after a reasonable time, and diligent search therefor, this defendant is unable to discover the same, such additional time as may be reasonably necessary for the purpose of supplying secondary evidence of the contents of the books, papers and data hereinbefore referred to, by the taking of testimony of firms, persons, corporations and other persons with whom said Badders Clothing Company had dealings.

JAS. H. HARKLESS.  
EDWIN D. McKEEVER.  
D. R. HITE.

UNITED STATES OF AMERICA,

*Western District of Missouri, Jackson County, ss:*

George S. Badders, being first duly sworn, on his oath deposes and says, that he has read the foregoing application, and knows the contents thereof, and that the statements contained therein are true, according to the best recollection of affiant as to the contents of said packing cases, books, papers and data mentioned in said

application; and, as to all other matters stated therein, that the same are true.

GEORGE S. BADDERS.

Subscribed and sworn to before me this January 25, 1915. My commission will expire Oct. 24, 1917.

[SEAL.]

EPHRAIM M. FUQUA,  
*Notary Public, Jackson Co., Mo.*

(Endorsed:) No. 4160. United States of America v. George S. Badders. Application for continuance. Filed as of date Jan. 23d by order of the court. Morton Albaugh, Clerk.

391 The Court, to the District Attorney: Do you have any showing you wish to make in response to this?

Mr. Robertson: Having had no opportunity, Your Honor, to think about this matter, or to examine it, beyond the fact that a copy of this application was handed to me a moment ago, and almost at the time of the beginning of this hearing, I hardly feel able to answer Your Honor as to whether I have any showing to make or not in response to this. I am inclined to think the Government will be safe to go ahead and hear this proposition, but out of an abundance of caution I would rather have a few minutes to deliberate upon a few matters which suggest themselves to me.

The Court: The Court will give you the opportunity you desire.

Mr. Robertson: Should like very much to do it. Might be I would want to prepare a counter showing.

The Court: Very well, then, you may take until—how long, twelve o'clock, noon, or one o'clock?

Mr. Robertson: One o'clock.

Mr. Harkless: I would like, so we may get our record straight, if you can turn conveniently to what was the record we had on Saturday morning in reference to this matter.

The Court: On the twenty third application was made to the Court for the privilege of filing a written application instead of and as supplementary to the oral application made at that time, and the court at that time said to counsel, you may have the privilege of filing in this court your written application as of this date in addition to the oral statement made by counsel for the defendant at the time. And the application now in writing shall be taken as part of the application made at the time; and that no advantage may be taken of defendant by reason of his proceeding with the examination of witnesses, I now direct the clerk to file the written application as of that date.

IN OPEN COURT, MONDAY MORNING, January 25, 1915.

392 The Court: Gentlemen of the jury, there are some matters that the court is considering outside of the examination of witnesses here and it will take some time to dispose of that, and you will be excused now until two o'clock. Will try and

dispose of what is before the court and be able to make further announcement. You will take charge of the jury until two o'clock.

AT CHAMBERS, ONE O'CLOCK P. M.

Mr. Robertson: I might say, Your Honor, that affidavits have been prepared in opposition to this motion, which it seems to me go very fully to any merit it may have.

I will first call Your Honor's attention to the affidavit of Mr. George A. Clark, which I hold in my hand, in which Mr. Clark, upon his oath, says:

In the District Court of the United States for the District of Kansas,  
First Division.

No. 4160.

UNITED STATES OF AMERICA, Plaintiff,

v.

GEORGE S. BADDERS, Defendant.

*Affidavit on Application for Continuance.*

DISTRICT COURT OF THE UNITED STATES,

*District of Kansas, ss:*

George A. Clark, being first duly sworn, on oath says:

That he is the same person who testified in the above entitled cause before the court and jury upon January 23rd, 1915, relative to the disappearance of certain boxes containing books, papers, files and correspondence of the Badders Clothing Company; that he is the receiver of said The Badders Clothing Company, appointed by the above named court as such in a proceeding in bankruptcy in said court in the month of January, 1914; that upon receiving said appointment he immediately duly qualified as such receiver, and as such official took possession of said The Badders Clothing Company, and of all things which he could find belonging to said corporation; that upon taking the possession of the property, books, papers and assets of said The Badders Clothing Company, the  
393 affiant was unable to find and has not to this day found certain of the books and records of said The Badders Clothing Company, including the minute books of stockholders' and directors' meetings, the stock certificate book, ledgers showing accounts with customers, cash books sales books, together with sales slips and transcripts of the records, all of which had theretofore been used in conducting the business of said The Badders Clothing Company. On January 30th, 1914, when affiant took possession of the rooms and property formerly held by The Badders Clothing Company, affiant noticed that said books and papers above referred to were not turned over. He thereupon made an oral demand upon George S. Badders, defendant herein, for the same, and in reply he, the said

George S. Badders, said in substance that all of the Company's books and papers were turned over except those counsel had advised him not to turn over; that some of said books had been turned over to the Bank of Topeka, and others held in a manner advised by counsel, and not to be disclosed to the receiver except on advice of his counsel, Mr. D. R. Hite. Afterward, and on February 3rd, 1914, affiant made demand in writing upon said George S. Badders for said books and papers. Said demand was and has not been complied with.

Affiant further states that the only book of account found by him belonging to The Badders Clothing Company was a certain ledger, which ledger is still in his possession, and which has at all times during the possession of this affiant been accessible to and is now accessible to the defendant and his counsel.

Affiant further says that he has never at any time refused either the defendant or his counsel access to any papers, books, records or documents of any sort in his possession, and has not refused said defendant or his attorneys an opportunity to make copies of any of such articles. Affiant further says that, on the contrary, he has at all times been courteous to the defendant in that regard, and has been willing to give him and his attorneys full access to everything of that kind in his possession. Affiant further says that in

394 the selection of such papers, documents, files, books and records as were packed in the two boxes in question, the defendant co-operated with him and assisted in the selection of all such articles, and that thereby the defendant knew what was in said boxes. Affiant further says that he personally packed all of said articles in said boxes himself, and knows that they were placed therein and securely nailed up. Affiant further says that the said boxes were placed in his office, at 113 West Fifth Street, in the City of Topeka, Kansas, about April 20th, 1914, and that when he, the affiant, testified in this case upon January 23rd, 1915, he believed they were still in that building.

Affiant further states that this cause came on for trial in the early part of October, 1914, at Leavenworth, Kansas, at which time the government had its witnesses present and announced ready for trial; that the defendant was there present with his counsel, but that, for some reason unknown to affiant, the trial was not had, but was continued to the January, 1915, term at Kansas City, Kansas. Affiant further says that at no time after said boxes were so placed in his office, either prior to the said October term at Leavenworth, or prior to this date, has either the defendant or any of his attorneys asked permission to have access thereto, or to see the contents thereof, or to take copies from anything therein.

Affiant further says that he has made every effort possible to repossess himself of the said boxes, and the said papers and documents, so packed therein all without avail, that he has offered a reward of \$500.00 for the return of such boxes, and evidence leading to the conviction of the party or parties who stole the same; that in the search for said boxes and their contents, he, the affiant, has been assisted by J. C. Lindland, Postoffice Inspector of the

United States, L. L. Kiene, Sheriff of Shawnee County, Kansas, the county wherein the city of Topeka is located, certain members of the police force of the city of Topeka, and L. S. Harvey, Assistant United States Attorney in the office of the United States Attorney for the district of Kansas. Affiant has made such efforts to locate and repossess himself of the said boxes that he has become satisfied and feels certain that the same cannot be found and cannot be produced.

GEO. A. CLARK.

Subscribed and sworn to before me this 25th day of January, A. D. 1915.

[SEAL.]

MORTON ALBAUGH, *Clerk*.

(Endorsed:) No. 4160. United States v. George S. Badders. Affidavit of Geo. A. Clark, on motion for a continuance. Filed Jan. 25, 1915. Morton Albaugh, Clerk.

Mr. Robertson: Mr. Albaugh, I have a statement prepared here, if it is a fact I would like to have you sign it.

Mr. Albaugh: I can either sign that or make it a part of the record, I suppose, the fact that no subpoenas have been issued by the defendant in this case for Mr. Clark, or shall I sign the affidavit.

The Court: Well, unless it is admitted that no subpoenas have been ordered or issued by the court on behalf of the defendant, it is necessary for you to swear to it.

Mr. Hite: It is the fact, Your Honor.

The Court: Then it is not necessary at all.

Mr. Harkless: We have stated two or three times as to why it was not done.

The Court: That is enough of this; we will get along and get done with it.

Mr. Robertson: In this application, Your Honor, for continuance the applicant says that certain daily reports were made to the Stein-Bloch people, which he desires access to, and that there were also daily and monthly reports made to Alfred Decker & Cohn, of Chicago, and I have affidavits on those two subjects.

Mr. Robertson reading affidavit of George C. Guggenheim, as follows:

In the District Court of the United States for the District of Kansas.  
First Division.

No. 4160.

UNITED STATES OF AMERICA, Plaintiff,

v.

GEORGE S. BADDERS, Defendant.

*Affidavit on Application for Continuance.*

DISTRICT COURT OF THE UNITED STATES,

*District of Kansas, ss:*

396 George S. Guggenheim, General Manager of the Stein-Bloch Company, of Rochester, New York, being first duly sworn, on oath says:

That the daily reports referred to in the application for continuance herein as having been made by defendant to the Stein-Bloch Company, are under his control, and can and will be furnished to defendant or his counsel, if so desired, upon this 25th day of January, 1915.

Affiant further says that, if there be any papers or documents in the possession of the Stein-Bloch Company which are desired by the defendant or his counsel in preparation of his defense in this case, that he will cheerfully produce the same if given a reasonable time and opportunity in which to do so, to the end that the same may be available to the said defendant and his attorneys.

GEO. C. GUGGENHEIM.

Subscribed and sworn to before me this 25th day of January, A. D. 1915.

[SEAL.]

MORTON ALBAUGH, *Clerk.*

(Endorsed:) No. 4160. United States v. George S. Badders. Affidavit of George C. Guggenheim on motion for continuance. Filed Jan. 25, 1915. Morton Albaugh, Clerk.

Mr. Robertson: In regard to the statement made in the application about Alfred Decker & Cohn having certain reports and certain correspondence, we have the affidavit of their general manager, Herbert T. Spiesberger, as follows:



In the District Court of the United States, District of Kansas, First Division.

No. 4160.

UNITED STATES OF AMERICA, Plaintiff,

v.

GEORGE S. BADDERS, Defendant.

*Affidavit on Motion for Continuance.*

DISTRICT COURT OF THE UNITED STATES,  
*District of Kansas, ss:*

Herbert T. Spiesberger, being first duly sworn on oath  
397 deposes and says:

That he is credit man and general manager of the firm referred to in the application for continuance in this case, of Alfred Decker & Cohn, of Chicago, Illinois.

That he is personally familiar with the entire business of said concern and has been for six years just past.

Affiant further says that he has with him at this time in Kansas City, Kansas, and in the building in which this case is in progress, all correspondence pertaining to the credit matters had between his firm and The Badders Clothing Company, of Topeka, Kansas; that such correspondence, if there be any that he does not have at this time in Kansas City, Kansas, the same can and will be produced so that it may — accessible to the defendant and his counsel within a reasonable time after request and designation made.

Affiant further says that whatever of such correspondence he has with him at this time at Kansas City, Kansas, the same may be immediately accessible to the defendant, and his counsel, if they desire to see it.

Affiant further says that The Badders Clothing Company never made any daily and monthly reports to said Alfred Decker & Cohn, and there is not now and never has been any such reports.

HERBERT T. SPIESBERGER.

Subscribed and sworn to before me this 25th day of January, 1915.

[SEAL.]

MORTON ALBAUGH, Clerk.

(Endorsed:) No. 4160. U. S. of A. v. Geo. S. Badders. Affidavit of Spiesberger on motion for continuance. Filed Jan. 25, 1915. Morton Albaugh, Clerk.

Mr. Robertson: Affidavit of C. C. Coulson (reading same):

in the District Court of the United States, District of Kansas, First Division.

No. 4160.

UNITED STATES OF AMERICA, Plaintiff,

v.

GEORGE S. BADDERS, Defendant.

*Affidavit on Motion for Continuance.*

98 UNITED STATES OF AMERICA,  
*District of Kansas, ss:*

I, C. C. Coulson, being first duly sworn, under oath state:  
That I was in the employ of the Badders Clothing Company from November, 1912, up to the time that the store closed, and that from March, 1913, just after Mr. Frankenstein had left the store, I had charge of the keeping of the books in the ledger and made the entries in a ledger belonging to the Badders Clothing Company, which is marked Exhibit 8 in the bankruptcy case, against said company, which said ledger is hereby made a part of this affidavit, and referred to as such; that I made the entries in said book about the end of each month's business, and that they were made from the stock books of said company, and the cashier's charge slips for each day during the month, and check stubs of said company made by Mr. Badders. That I know that said amounts as shown in the ledger referred to herein are true and correct, as shown by the said monthly cashier's sheets and statement of business, and the charge slips and check stubs.

C. C. COULSON.

Subscribed and sworn to before me this 25th day of January, A. D. 1915.

[SEAL.]

MORTON ALBAUGH, *Clerk.*

(Endorsed:) No. 4160. United States v. George S. Badders. Affidavit of C. C. Coulson on motion for continuance. Filed Jan. 5, 1915. Morton Albaugh, Clerk.

Mr. Robertson: Now, unknown to us, Your Honor, a witness presented himself from here yesterday, apparently, as near as we can learn, and went to Topeka; his name is George Thompson; he called over long distance telephone this morning and said he made an effort to get here but missed his train. I would like to offer what he say will be his affidavit when he presents himself here. (Reading same.)

The Court: This last paper is not the affidavit of the man; it is that you say he may testify to.

399 Mr. Robertson: Yes sir, and if Your Honor goes on with the hearing, I would like to have an understanding that this be inserted and filed as of this moment, after we get his signature to it, if he does sign it. He cannot get here before four thirty this afternoon.

The Court: Anything further. Is that all?

Mr. Robertson: It would be impossible for Your Honor to go through this book (referring to the Ledger.)

Mr. Harkless: There is no controversy about that book, never has been.

Mr. Robertson. We can state what is in the book, it contains the accounts of the business there.

The Court: Is there any argument on this proposition.

Mr. Hite: Very briefly, Your Honor, the situation presented here, it seems to us, to justify the court in postponing the trial of this case until we can find these papers, if we can. At least, until we can make a reasonable effort to find them. As stated in this application for the continuance, the defendant has employed a detective agency to make a search for the boxes, for these papers, and to try and find where they are. And we have an idea that is altogether likely that some mistake has been made with reference to these boxes and that they may be located. On this morning, as Your Honor is apprised, there were some letters brought here by Mr. Harvey that had been overlooked by Mr. Clark and were in Mr. Harvey's vault, and these papers that were brought here this morning, an examination of them will show fully justify the statements made in the application for a continuance, to the effect that the papers referred to in the application are of great consequence to this defendant. Now the application in that respect speaks for itself. In dealing with the answer that has been made by these affidavits, Your honor will observe that they cover in two instances the matters of the transactions of the Badders Clothing Company with two of its creditors only. The question as to the corroboration of any testimony that might be given by any other witness of papers

400 contained in these cases is a very serious one, and it seems to me, Your Honor, that in this kind of a case the testimony going to the intent of the defendant is of great consequence, and the question here for Your Honor to determine is whether it is fair that this defendant should be forced to go to his trial and put up his defense without having these documents that were in the custody of the receiver, and, in so far as we had any knowledge, were to have been produced here. I desire to recall to Your Honor's attention that when the application was made in the first place, and attention was called to the fact that these papers were said to be in the possession of the receiver, that Your Honor then stated to counsel that you thought we should be entitled to an examination and inspection of them upon our statement they were necessary to us in making up our defense. This matter of the inability of the receiver to produce these papers came as a surprise to us, the same as to the United States Attorney. Where those papers are at this time of course no one knows.

Mr. Robertson: Pardon me. Why was there no suggestion of that kind made prior to the Leavenworth Court.

Mr. Hite: There were two reasons. First, there never was any question but those papers were in the hands of the receiver; counsel had talked with me, and Major Harvey stated to us—that when it appeared that there would be a prosecution by the government—I stated to Major Harvey we wanted every scrap of paper in that place preserved, and Major Harvey will cheerfully corroborate that; he has said so to me this morning. And these papers were there by Mr. Harvey and Mr. Clark carefully preserved, as we supposed. Now at Leavenworth there never was any reason for us to suppose that we would go to trial. There was a demurrer to an indictment which was very seriously considered by Judge Van Valkenburgh; and at that time we stated to the court we would have to have some time to get ready for trial, and Judge Van Valkenburgh said we were entitled to it, that the questions arising on the demurrer were very serious ones, and that therefore we were entitled to have some time to go to

trial. We did not subpoena any witnesses for the term of  
 401 court there, and that was the reason we did not. Another reason we have never taken any active steps to compel the production of these papers was because up to this very minute the Badders Clothing Company has been, and is now contesting the validity of the seizure of those papers by Mr. Clark, and we have been of the opinion that we had no right to accept his receivership and custody of the papers, and at the same time be disputing it in the civil case.

Mr. Robertson: Inasmuch as you are directing your remarks to me, I will ask you if you want to tell this court any action you take in this criminal court would have any bearing on civil matters at all?

Mr. Hite: I do not believe I understand you Mr. Robertson, but I do not mean to digress from the matter immediately before the court, but what I do say is, that from the time these papers were taken from him by Mr. Clark there never has been any misunderstanding as to the position of the defendant, and that he would require the production of those papers at some time. It was at his election these particular papers were preserved. Now as I think the court was influenced in passing upon our application for a postponement of the trial by the fact that we could get these papers, and directed that they should be sent here, and I think that if the court had then understood that we could not get those papers within a reasonable time that there might have been some different ruling made upon the application. Now if this were a case where the production of these papers appeared to be impossible, I freely admit there wouldn't be any ground for a continuance; there would be no showing that at some subsequent time we would be in a better situation than now; but we think the defendant has a right to make an independent search for these papers himself, in some reasonable way, at least, and we think also that if we cannot find those papers, finally determined they are irretrievably lost, we ought to have an opportunity of supplying secondary testimony of a corroborative character

or what the defendant says those papers contain, and in order to do that, we have to get access to the books of the wholesalers and the correspondence of the wholesalers, and so it seems to me,  
402 Your Honor, this is a very meritorious application. There does not seem to be, as far as we can ascertain, anybody at fault about this matter. It is not a situation brought about by us, and it is not a situation brought about by the government. It is one of those unavoidable circumstances that have arisen in the course of the trial of the case.

Mr. Harkless: It is like the case where the records were burned during the progress of the case.

Mr. Hite: And it seems to me in the interest of having a fair and impartial trial, and giving him an opportunity to present his defense, and to corroborate the testimony of other witnesses by written papers, that he ought to have that opportunity. Not it seems to me Your Honor understands our position thoroughly in the matter, and that is it.

The Court: Do you have any suggestions to make?

Mr. Robertson: I would suggest this general principle, that in the first place this application for continuance, Your Honor, if I read it right and understand its language, does not point out in any manner where any of these claimed articles are material to their defense, no showing, absolutely, that I can find in the thing at all, in this application for continuance. They would lead one to conclude, the burden of it is, that certain things have been taken, and they think maybe they might want them, and for that reason they want a continuance. Now, on the other hand, or, in addition to that I should say, I would call Your Honor's attention to the fact there has been no diligence of any sort shown in this case at any place by defendant or his counsel. They have never asked for a subpoena in this case for the receiver, for these boxes or for anything that was in them; they have never asked for an inspection of them. Those circumstances, to my mind, Your Honor, indicate one of two things, that either they knew the books and papers were not there, or they hadn't any earthly use for them. Now those circumstances cannot indicate anything else, it seems to me, to the average observant mind. That

there has been ample opportunity of every sort shown for  
403 defendant to have had these papers and documents if he had desired them, there can be no question. I see no reason, Your Honor, why there should be a continuance granted here, and I believe with the affidavits submitted by the Government there is no question at all about the matter.

Mr. Hite: Your Honor, I wish to resent the imputation of counsel that there is any ground to suppose that we knew the papers were not there, and I call upon the United States Attorney now, if he has any grounds for the making of that sort of an insinuation, to state them now. It is not true, and if he has anything of that kind, it is his duty to this court to disclose it.

The Court: You want to file these affidavits.

Mr. Robertson: Yes sir.

The Court: Let them be filed, except the one last read, you need not file that.

The Court: I will announce a ruling.

In Open Court, two o'clock P. M., Monday, January 25, 1915.

The Court: In view of what has heretofore transpired in the course of the trial, and after due consideration of the application made for a continuance, and the counter affidavits filed by the government, the court denies the application for a continuance. You may proceed.

Mr. Hite: Defendant asks an exception.

The Court: Yes, certainly.

The Court: I may say, for the information of counsel, and of the jury, that during the progress of this trial the court will convene in the morning at half past nine; adjourn for recess at or about half past twelve; re-convene at two o'clock in the afternoon, and recess at about five, and re-convene at seven o'clock in the evening, and continue as late as the court may see proper during the night, the purpose being to further this trial as fast as I can, and get through with it.

4 Mrs. Ira W. Burdick, called as a witness on behalf of the plaintiff, having been first duly sworn, testifies as follows:

Direct examination.

Questions by Mr. Robertson:

Q. What is your name?

A. Mrs. Ira W. Burdick.

Q. Are you acquainted with the defendant Mrs. Burdick?

A. I am.

Q. How long have you known him?

A. About three years.

Q. Were you in the employ of the Badders Clothing Company at that time?

A. Yes sir.

Q. During what period?

A. Well I was with them all the time from the time the store started, about two years.

Q. About two years?

A. Little over two years.

Q. Were you there when the business was closed?

A. Yes, until the day the receiver took charge, 30th of January,

4. Were you there at all times during the sale which was held in December 1913 and which continued into January 1914?

A. Yes.

Q. What position did you hold there in the store during that time?

A. I was cashier.

Q. How long had you held the position of cashier there?

A. Eleven years and two months.

Q. Explain to the jury, briefly, what your duties consisted of.

A. Well I made up the daily cash receipts. I took care of all the money and took the money when people came in to pay their bills, and I did all the charging of the accounts that were opened for the store.

Q. Just explain how you handled it, what method was used, Mrs. Burdick?

405 A. Well, we had machines, and the tickets were made on them; the money came to the desk to me, and the next day I made up my cash sheets.

Q. What do you mean by cash sheets?

A. Well it was a ruled sheet of paper that we used for that purpose.

Q. You made that up every day?

A. Every day.

Q. What do they show?

A. That showed the amount of cash we had taken in and the collections.

Q. And collections?

A. Yes sir.

Q. Now what if anything would you have to do Mrs. Burdick with disbursements, paying out of money?

A. Well all I paid out was just the accounts around, express or anything like that, paid that.

Q. Were you ever furnished any slips for disbursement purposes by the defendant?

A. I was.

Q. Explain to the jury about that?

A. Well there were some for dividends.

The Court: I can't hear, nobody else can hear, speak a little louder if you please.

A. There were some for dividends.

Mr. Hite: The defendant objects to the witness testifying as to the contents of any of these slips as secondary evidence.

Mr. Robertson: Do you know anything about where these slips are now?

A. I do not.

Q. Know anything about them now at all?

A. Not a thing.

Q. Were they left in the business there after you retired from it?

A. Well I don't know whether they were there or not, I thought they were, they were in the vault.

Q. They were left in the vault?

406 A. Yes sir.

Q. And were they there when the receiver took charge?

A. I thought they were but I don't know.

Q. You are not sure about that?

Mr. Robertson: I think the evidence amply shows they are not here, Your Honor.

Q. I wish you would explain to the jury just what those were and what they showed?

Mr. Hite: We object to the witness testifying as to the contents of any of these papers on the ground it is secondary evidence, the papers speaks for themselves, no proper foundation has been laid for the introduction of secondary evidence.

The Court: Well I think you ought to lay the foundation for introducing the contents of a letter by showing what became of it, if you know. She says she thought it was in the vault, but she don't know whether it was, she has made no search for it, and don't know where it was, or whether it is there now or not, or whether anybody else made a search.

Mr. Robertson: I may have an incorrect memory Your Honor, but if I didn't prove by Mr. Clark the other day, I intended to, the slips of this kind were all missing, he couldn't find them, was not able to get them at all.

The Court: Well, I believe since you mention it Mr. Clark did testify he came into possession of no such slips.

Questions by the Court:

Q. Before the receiver was appointed who had access to the vault where these papers were?

A. Mr. Badders.

Q. How was the vault locked, if locked at all.

Q. Well it locked just like any vault.

Q. Who had the key to it?

A. There was no key it was a combination.

Q. Who had the combination?

A. Mr. Badders.

Q. You know of anybody else about the store that had the combination?

407 A. No one else had it.

Q. No one else had it?

A. No sir.

Mr. Hite: Before the witness is permitted to answer, I direct the attention of the court to Mr. Clark's testimony; as I recall the testimony he did testify he did see some of these cash slips, and furthermore witness Clark testified to the fact the combination of the vault had been given to him by Mr. Badders or by Mrs. Burdick.

The Court: It is almost impossible to recollect all Mr. Clark stated about this matter. I recollect he did say he didn't have these slips, never came into his possession. Go on with your question: I will allow the question.

Mr. Hite: Except.

Q. Just explain to the jury about what those were?

A. Well there was a ticket for dividends, twenty five per cent.

Q. You remember how much money that was, if so you may state?

A. Several thousand dollars, I don't remember exactly.

The Court: How much?

A. Several thousand.



The Court: Who were the dividends paid to? Do you know?

A. Well, it didn't say who paid to, said dividends.

Questions by Mr. Robertson:

Q. Tell the jury just what this slip had on it?

Mr. Hite: Objection renewed?

The Court: Same ruling.

Mr. Hite: Except.

A. I don't remember just what it had on it, I know it was for dividends.

Q. State, if you know, the purpose of the slip?

Mr. Hite: Object to that.

The Court: Sustained.

Q. Did you take any information off of this slip?

A. Nothing but dividends if I remember.

408 Q. What if anything do you know about it being entered upon the ledger?

A. It was entered in my expense voucher.

Q. For how much, if you remember.

Mr. Hite: We think the ledger entry would be the best evidence.

The Court: These slips given to you, in whose handwriting were they?

A. Mr. Badders'.

Q. Any one else handwriting on any of those slips given you except his in reference to dividends?

A. No sir.

Q. How many slips containing reference to dividends were there, if you recollect?

A. I believe two.

Q. Two. Do you know to whom these dividends were paid?

A. I know——

Mr. Harkless: Of your own knowledge.

The Court: I am asking of her own knowledge? Do you know?

A. I know I got twenty dollars.

Q. How much?

A. Twenty dollars.

Q. Any one else to your knowledge?

A. Mr. Burdick got forty five I believe.

Q. You know he got that?

A. I know he got that.

Q. Who else got it?

A. Well I couldn't say only just from testimony, is all I know.

The Court: Go on sir.

Questions by Mr. Robertson:

Q. You say there were slips covering two dividends?

A. I think so, is the way I remember it.

Q. For what else, if anything, were slips furnished you by Mr. Badders?

Mr. Hite: Same objection as to the other with reference to the dividends.

The Court: Same ruling.

Mr. Hite: Except.

409 A. Fifteen per cent commission for all sales over fifty thousand dollars.

Q. During when, if you know?

A. I don't know how long, for the year I think, I am not sure.

Q. 1913?

A. I think so.

Q. Now what other items if any do you recall of that kind that Mr. Badders handed you these slips for?

Mr. Hite: Same objection as to secondary testimony, Your Honor.

The Court: Answer.

Mr. Hite: Except.

A. Twenty five per cent for selling the stock, ten thousand dollars' worth, I think of the stock.

The Court: For what?

A. Selling the stock.

The Court: Stock.

Q. How much did that amount to, if you recollect?

Mr. Hite: Same objection.

The Court: Overruled.

Mr. Hite: Except.

A. Twenty five hundred I think the amount of that was.

The Court: How much was that?

A. Twenty five hundred I believe as near as I can remember.

Questions by Mr. Robertson:

Q. Now what other items, if any, of this kind, do you recall having for of Mr. Badders?

A. Secretary's commission.

Q. What was that?

A. Five per cent, that was two thousand and something.

Mr. Hite: Object to that for the same reasons heretofore stated.

The Court: Same ruling.

Mr. Hite: Except.

Q. State if you remember what the *the* rate of commission was and what based upon, if you know?

Mr. Hite: Same objection as stated before.

The Court: Same ruling.

Mr. Hite: Except.

A. I think it was five per cent of the sales, I am not sure.

Q. Of what sales Mrs. Burdick?

A. Well I don't know whether it was for the year or not.

The Court: After you received one of these slips what did you do with it?

A. I made an expense account of it.

Q. How was it paid?

A. I don't know, I don't know that it was paid.

Mr. Robertson:

Q. Did you personally enter these items upon the books, the ledger of the Badders Clothing Company?

A. I did. Not on that ledger, on the expense voucher of my own, the one I kept.

Q. Do you know what became of the expense vouchers?

A. No I don't.

Q. What did you do with them?

A. Put them in the vault.

Q. Do you know Mrs. Burdick and can you state what these items all amounted to?

Mr. Hite: Object for the reasons heretofore given, secondary testimony, contents of an instrument whose absence is not accounted for.

The Court: Answer.

Mr. Hite: Except.

A. I don't remember the amounts.

Q. I would like to ask you whether there was a slip regarding salary, and if so, what it was?

A. Yes, there was one.

Mr. Hite: Note our objection to the question. Your Honor, I do not care to repeat this and interrupt the witness if I could avoid it, but under our rule in this District the exception must be noted; I ask Your Honor's pardon for interrupting on the same line of questions.

The Court: We will try and get along some way here without any trouble amounting to much. Answer the question the

411 District Attorney put to you.

Mr. Hite: Except.

A. Why it was five thousand dollars a year increase in salary.

Q. Now Mrs. Burdick, when were these slips handed to you by Mr. Badders?

A. Well some time in December.

Q. Was it while the sale was in progress?

A. While it was, yes sir.

The Court: December 1913?

A. Yes sir.

Q. Now who was making entries upon the ledger at that time?

A. In that ledger there?

Q. If you know, yes?

A. I think Mr. Coulson made those.

Q. I call your attention to book marked Exhibit No. 39 and ask you if you recognize it as being one of the books of the Badders Clothing Company?

A. Yes sir.

Q. What books is this, if you know?

A. Well that is the eastern ledger.

Q. Is that the general ledger of the business there of the store?

A. Yes sir.

Q. Now then state if you know who made the entries upon this book of these slips that you have spoken of?

A. Mr. Coulson.

The Court: Mr. Who?

A. Mr. Coulson.

Q. What were his initials, if you know?

A. C. C.

Q. What was his business there if you know?

A. Well he was clerk and he helped with the books.

Q. Mrs. Burdick state if you know what the total amount of, what was the total amount of cash received from the sale during the sale held in December, 1913, during the time Mr. Adler was there?

A. I don't remember.

412 Q. I didn't get the answer?

A. I don't remember what it was while he was there, all I can remember is for the month of December.

Q. Do you know what it was for the month of December, if you do, I wish you would state?

Mr. Hite: Object unless the witness is speaking from independent knowledge and not from knowledge of any books.

Q. You have a recollection of what the amount was?

A. I don't remember for sure, I think about thirty six thousand dollars.

Q. Was that matter talked over between you and Mr. Badders?

A. No I don't remember of talking it over with him.

Q. Didn't Mr. Badders have a talk with you about how much cash you had taken in from time to time?

A. Well he knew how much had been taken in.

Q. And you knew when the month ended how much it all amounted to, did you know?

A. I did.

Q. And he knew?

A. I suppose so.

Q. Now then just explain to the jury how you handled the cash there in that business, and what you did with it?

A. Well I took it in during the day and the next morning I would make it up for the bank.

Q. Then after you made it up for the bank what was done with it?

A. I gave it to Mr. Badders.

The Court: What did you do with the money after you took it?

A. I made it up for the bank and Mr. Badders took it down to the bank.

The Court: She made it up for the bank. That is, to say, you put it in a deposit book?

A. I added it up on the adding machine is the way we got it ready and handed it to Mr. Badders.

Q. You added it up on the adding machine and handed it to Mr. Badders, and as far as you know he deposited in the bank or took it to the bank?

413 A. I don't know whether he did or not.

Q. Well it was done for that purpose?

A. Yes sir.

Q. You spoke a while ago of the dividend for the secretary; if you have any recollection as to what the amount of that was I wish you would state it?

Mr. Hite: Same objection as to stating contents of a paper as heretofore made.

The Court: Overruled.

Mr. Hite: Except.

A. Well it was over two thousand dollars, I don't remember just how much.

The Court: What was that for?

A. Secretary's commission.

The Court: Secretary's commission?

A. Yes sir.

Mr. Robertson:

Q. You don't recollect, as I understand it, the exact amount?

A. Not exactly.

Q. You had a slip covering that?

A. Yes sir.

Q. Do you know who got that money?

A. Well Mr. Burdick received four hundred of it and S. R. Graham the rest, whatever the amount was.

Q. What if anything did you have to do with the checks that were written upon the bank account, Mrs. Burdick?

A. Well I didn't really have anything to do with that.

Q. Who handled that part of the business?

A. Usually came back to the store and we checked them over with the check book to see if balanced with the bank.

Q. Who wrote the checks Mrs. Burdick?

A. Mr. Badders wrote most of them, I wrote some for a while.

Q. Did you write any after December 1, 1913?

A. No sir.

Q. What conversation if any did you have with Mr. Badders about Mr. Graham receiving a commission?

A. None whatever.

414 Q. I want to have you make clear to the jury, if you can, Mrs. Burdick, how the bookkeeper Mr. Coulson came to have knowledge of these charges that you speak about, if you know?

A. Well he took it from my expense voucher.

The Court: You want to know how the man that wrote in that book obtained the information upon which he made those entries, and she says what?

A. From expense vouchers.

Mr. Robertson:

Q. And what was done with those expense vouchers.

A. They were put in the vault.

Q. Know anything about where they are now?

A. No sir.

Q. I will ask you to state whether these were charge slips or not?

Mr. Hite: We object again to the witness testifying as to the contents of these, and she said she didn't remember what was on these slips except in a general way.

The Court: What do you mean by charge slips?

Mr. Robertson: I don't know whether the jury has the same idea as I have or not.

The Court: You take care of your own ideas and the jury of theirs.

Mr. Robertson: I want the jury to understand why these slips were sent up to her desk.

The Court: Do you know why you got the slips?

A. Well I suppose it was money paid out, to be paid out as expenses.

Mr. Robertson:

Q. What if anything did Mr. Badders say to you about that?

A. I don't remember; he told me there would probably be changes; there was some changes, said there would be probably more when he figured up to see how the business came out.

Q. What if anything did he say to you about these slips Mrs. Burdick?

A. He didn't say anything when he gave them to me.

The Court: Was he advised of the manner in which you kept those slips; did he see you keeping them and how you kept them?

A. He knew I kept the expense voucher book.

Q. What did he have to say in reference to the entries in this book, if anything, as to whether he knew—

A. I don't know whether he looked at them after I entered them or not, I never gave it to him.

Mr. Robertson:

Q. I will ask you whether during the time you were cashier there, which I understand was about two years, had you ever had dividend and increase salary slips, such as these, sent up to you before?

A. Well no there had never been any.

Q. Never been anything like that?

A. There had been other things, not that.

Q. What time in the month of December 1913 did these things happen?

A. I don't remember, some time during the sale.

The Court: It was during the sale?

A. Yes sir.

## Cross-examination.

## Questions by Mr. Hite:

Q. Mrs. Burdick, I understand that when Mr. Clark took charge there of the property of the Clothing Company you were still in that store?

A. I was.

Q. Did Mr. Clark get the combination to the vault at that time?

A. Why I suppose he did, he opened the vault any way.

Q. He had access to the vault, did he?

A. He did.

Q. And so far as you know these slips and papers and books of entries that you speak of were in that vault when Mr. Clark took charge?

A. As far as I know.

Q. As far as you know; Mrs. Burdick was it part of your duty to put the books and papers there pertaining to your desk and office in the vault?

A. I did.

Q. How often did you do that?

416 A. Every night.

Q. And did you take these out every morning?

A. I did.

Q. When you needed them?

A. Yes sir.

Q. The night before Mr. Clark took charge had you put the books in the vault just as usual?

A. Well I don't remember whether I had them out the day before or not, I think I did though; I think Mr. Badders opened the vault for me and I took them to the vault.

Q. And as I understand it, so far as you know, they had not been taken out of the vault up to the time Mr. Clark took charge is that right?

A. Not as far as I know.

Q. What did Mr. Coulson do in the store?

A. Well he clerked and he helped with the eastern ledger.

Q. He just helped with it, didn't he?

A. Yes sir.

Q. There were other people who worked on that book from time to time besides Mr. Coulson, were there not?

A. Yes sir.

Q. Mr. Coulson's principal occupation in the store was that of a salesman, was it not?

A. It was.

Q. Now Mrs. Burdick during this sale period which lasted six or seven weeks, did it not?

A. Lasted close onto two months.

Q. Lasting close onto two months; during that period or good part of that period, the clerks in the store were very busy were they not?

A. They were.

Q. And Mr. Coulson was very busy too?

A. Yes sir, he was.

Q. In selling goods?

A. Yes sir.

Q. At the time that these memoranda that you speak of relating to dividends and commissions were given to you, is it not  
417 a fact Mrs. Burdick that Mr. Badders said to you that he wanted to try and find out how the business stood, or something to that effect?

A. Yes sir.

Q. And that he wanted these entries made for that purpose; did he not say that?

A. He told me that sometime during the month, I don't remember just when.

Q. Is it a fact that Mr. Badders at that time was to your knowledge from what he said to you trying to get at the actual condition of the business?

A. As far as I remember.

Q. Now was there any actual balance of the books of account made?

A. No I don't think they got the balance.

Q. They were at work on that after the sale, were they not?

A. They were.

Q. Trying to get that balance, was that so Mrs. Burdick?

A. I think Mr. Coulson was working on it the day the receiver took charge.

Q. Working on the books, seeking to find a balance, is that true Mrs. Burdick?

A. I think he was.

Q. You don't know Mrs. Burdick that anybody got any dividends except you and Mr. Burdick?

A. That is all that I know.

Q. That is all that you know anything about?

A. Yes.

Q. Now Mr. Burdick was also a salesman in the store, was he not?

A. He was.

Q. And you and Mr. Burdick, as well as Mr. Boyd, had worked pretty hard in that sale, had you not?

A. We had.

Q. And as I understand it, you received twenty dollars as a dividend on a share of stock that had been given you by Mr. Badders, is that true?

A. Yes sir.

418 Q. And Mr. Burdick received, as you remember it, forty five dollars?

A. Forty five dollars.

Q. And also received four hundred dollars as commissions, is that right?

A. That is right.

Q. I understand your testimony to be also to the effect that these



moneys paid to you and Mr. Burdick were paid during the course of the sale, is that correct?

A. Paid during December.

Q. Paid during December, but that was while the sale was in progress, is that true?

A. Yes that is true.

Q. To refresh your remembrance Mrs. Burdick, please state, if the commission paid to Mr. Burdick was not given to him right about Christmas time?

A. Well I believe it was given to him New Year's night but I am not sure.

Q. You are not sure?

A. I don't mean New Year's night, I mean Christmas eve.

Q. Christmas eve, that is your best recollection?

A. That is the best recollection I had.

Q. Now as I understand it Mrs. Burdick, when you would make up expense vouchers that you speak of you would put those in the vault also?

A. I filed them in an envelope.

Q. You filed them in an envelope in the vault?

A. Yes sir, we had a box we kept them in.

Q. You had a box you kept them in?

A. Yes sir.

Q. And then Mr. Coulson would have access to those expense vouchers, is that true?

A. Well he didn't take them from the envelopes, he took them from the books.

Q. Then as I understood it, you entered these expense vouchers on a book that you kept?

A. Yes sir.

419 Q. And Mr. Coulson would take entries from that book and put them on this ledger, is that right?

A. That is right.

Q. I understood you to say in your direct examination Mrs. Burdick that you kept account also of the charge accounts?

A. Well, the people that had things charged there in the store I did.

Q. And that was for keeping track of the goods that went out of the store for which no cash was received on one of these cash slips, is that right?

A. Yes sir.

Q. During the month of December did you have a charge slip of any kind with reference to any goods where you made the charge to Mr. Badders' personal account?

A. I had the slips but I never had them entered, too busy to put any charges in during the month; they were in the vault.

Q. You had the slips of goods that were sent out of the store?

A. I suppose I had; they were charged to him.

Q. And charged to Mr. Badders' personal account?

A. Yes sir.

Q. You had those slips at the time the receiver took charge?

A. They were in the vault.

Q. And you say they had not been entered on the ledger because you had not had time, had not had time?

A. Didn't think there was any hurry.

Q. Now was it customary to enter those matters at the end of the month?

A. Yes we always tried to have them entered by the end of the month.

Q. But owing to the press of matters growing out of this sale you couldn't do that at that particular time?

A. That was the reason.

Mr. Robertson: Objected to as argumentative.

The Court: I will allow the answer to stand.

Q. You say that was the reason?

A. That was the reason, and there weren't very many  
420 charges charged that month.

Q. So you laid those aside?

A. Put those in the safe.

Q. To be entered at some future time?

A. Yes sir.

Q. Were there any charges of goods actually made to Mr. Badders' personal account?

A. Yes there were several thousand dollars, but I can't remember the amounts, several tickets.

Q. And those tickets were furnished to you by Mr. Badders?

A. They were, they were made out on the machines, if I remember right.

Q. Now you have spoken several times Mrs. Burdick about these machines, what were they?

A. Well they were duplicates, they made three tickets, one for the customer and one to stay in the machine, and one to come to the desk.

Q. Now did those machines come into the hands of the receiver, if you know?

A. Why I am sure they did, they were in the store.

Q. As I understand you, those machines would contain duplicates of these charges?

A. As I remember they were machine charges.

Q. I am speaking now of those charges to Mr. Badders' personal account, on account of goods which you say amounted to several thousand dollars?

A. Yes sir.

The Court: Let me ask a question so as to get the matter in my own head.

Q. You say that several thousand dollars' worth of goods during the month of December 1913 were charged to the private account of Mr. Badders?

A. It was.

Q. Do you know what became of those goods?

A. I do not.

Q. You had nothing to do with that?

421 A. I had nothing to do with that.

Q. Were there any counter entries made after that, after these goods were charged to his private account, showing their return or otherwise?

A. Well Mr. Badders told me the day the receiver took charge to mark them off that they were returned, if I remember right.

Q. What time was that?

A. That was January 30th, but I didn't mark them off.

Q. Do you know to whom they had been sent at the time you marked them off?

A. No sir.

Q. Did he make any statement to you at the time about why these goods were charged to his private account?

A. No sir.

Q. State anything as to what he wanted with them?

A. No sir.

Redirect examination.

Questions by Mr. Robertson:

Q. At the time those goods come back into the store Mr. Badders say anything to you about what your attitude should be towards the receiver or anybody else that might inquire about them?

A. No sir.

Q. Know of his talking with anybody else in the store about that?

A. No sir.

Q. Were you there when the receiver and his attorney came in and asked about goods returning?

A. I don't remember of hearing them ask about it.

Q. You remember of their being there?

A. Yes I remember of them being there, didn't hear that conversation.

Q. Didn't hear what Mr. Badders said to them about it?

A. No sir.

Q. Now then this several thousand dollars' worth of merchandise that went out, or at least for which you were given slips as having gone out of the store, you say were never entered on the ledger?

A. No.

422 Q. What became of the slips?

A. In the vault.

Q. Were they in the vault when the store was closed?

A. They were there when I left.

Q. When did you leave?

A. The day after the receiver took charge.

Q. Did you see them?

A. Yes I was in the safe and saw them there.

Q. Was Mr. Badders there when the receiver took charge?

A. I believe he was in the store, I wouldn't say for sure.

Q. And do you know he continued on there day after day after that in the store and Mr. Badders also?

A. Mr. Badders?

Q. Yes?

A. I was not at the store.

Q. Who was it said to you to lay these slips aside and not enter them at the time?

A. No one told me not to enter them. I was busy.

Q. Well but the slips regarding the dividends were entered?

A. Yes.

Q. And regarding the increase in salaries, they were entered in the ledger?

A. Yes sir.

Q. Now then did Mr. Badders indicate upon these slips that counsel refers to, who these goods were to go to?

Mr. Hite: Object to that as calling for secondary testimony; there is no evidence that the slips cannot be produced, and in view of the testimony of the witness they probably can be produced.

Mr. Robertson: Counsel introduced this subject entirely himself.

The Court: I understand he did, but he objects to the question on the ground that the slips themselves are the best evidence of the persons to whom they were shipped, and before secondary evidence is introduced these slips must be accounted for.

Mr. Robertson: We will be able to show, if there is any question about it, that they are in no manner in the custody or under the control of the receiver.

423 The Court: That you may show after while, that he had never had them, but the question now is, as to whether she knows. Do you know the names of persons to whom those slips were made?

A. I do not.

The Court: Well, can't get much more out of her, can you?

(Witness excused.)

C. C. COULSON, called as a witness on behalf of the plaintiff, having been first duly sworn, testifies, as follows:

Direct examination.

Questions by Mr. Brady:

Q. What is your name?

A. C. C. Coulson.

Q. Where do you live?

A. Topeka, Kansas.

Q. Do you know the defendant George Badders?

A. I do.

Q. How long have you known him?

A. Possibly twelve or fifteen years.

Q. Were you in the employ of his store during 1913, of the Badders Company store?

A. Yes sir.

Q. At Topeka?

A. At Topeka, yes sir.

Q. When did you first begin to work in that store?

A. I think in November 1912.

Q. And when did you quit?

A. In January 1914.

Q. When the receiver took charge?

A. Yes sir.

Q. This last year ago now?

A. Yes.

Q. And what were your duties in the store?

A. I was hired as a salesman and after Mr. Frankenstein left I kept the ledger.

Q. And about what time did Mr. Frankenstein leave the  
424 store, leave the business?

A. I think he left there in either April or May.

Q. 1913?

A. 1913, yes sir.

Q. And from then on you say you kept part of the books?

A. Yes sir.

Q. Just tell the jury what part of the books you kept?

A. I kept this book, is about the only one I kept, this ledger.

Q. That is, Exhibit No. 39, you kept that book?

A. Yes sir, kept this book.

Q. And made the entries in it?

A. Not all of them.

Q. Well the entries that were made while you were keeping the  
book?

A. Yes sir.

Q. There were entries in the book prior to that time?

A. There were, yes sir.

Q. Now, Mr. Coulson, what books were there kept in the Badders  
Company in the general course of their business?

A. A stock book and check book and probably cashier's book kept  
there.

Mr. Hite: You say probably, I didn't hear you?

A. Cashier's slips.

Mr. Brady:

Q. Cashier's slips?

A. Yes sir.

Q. Was there a cash book?

A. I don't know as to there being a cash book.

Q. And were there any other books besides these cash slips; who  
kept the cash slips?

A. Mrs. Burdick.

Q. And where did you get your information and your figures that  
you entered in Exhibit No. 39?

A. From the cash slips.

Q. From the cash slips prepared by Mrs. Burdick?

A. Yes sir.

425 Q. Do you know how she made those cash slips?

A. They were made up after each day's business.

Q. From what?

A. From the tickets; and the money that she had paid out or received.

Q. That would be from the tickets and memoranda of the sales?

A. Yes sir.

Q. And the check book? Where checks were given?

A. Yes sir.

Q. And from cash slips prepared by Mr. Badders?

Mr. Hite: We think, if Your Honor please, counsel for the government should not lead the witness, and we object on that ground. Let the witness state.

The Court: The entries that you made in that ledger Mr. Coulson you say you obtained the information from which you made these entries from Mrs. Burdick?

A. Yes, from the monthly report of the daily business.

The Court: Go on now.

Mr. Brady:

Q. Now Mr. Coulson, did you ever make any entries in that book in reference to dividends?

Mr. Hite: Object to that because it is not the best evidence.

Q. I wish you would open the book, Exhibit No. 39, to the page where those entries are made; have you it?

A. Yes sir.

Q. I wish you would state from what you made those entries?

A. I made them from the cash slips, cash slips Mrs. Burdick made out.

Q. What time in the month would you make the entries in that book?

A. Generally right after the first of the month or the last day of the month.

Q. Every month. You did that every month from May until you left the store?

A. Yes.

Q. I wish you would read the entries there in reference to dividends.

426 Mr. Hite: Objected to as incompetent, irrelevant and immaterial, hearsay.

Q. First, I desire to offer page, what page is that?

A. Twenty six.

Q. I desire to offer page 26 of Exhibit No. 39 in evidence.

Mr. Hite: Objected to as incompetent, irrelevant and immaterial, hearsay. It is not shown by the witness to have had any knowledge of the transaction there recorded; not shown that the defend-

ant has ever seen the entry, and if taken from some other entry it is secondary.

The Court: Did you keep that book?

Mr. Hite: And is a corporation record and not a record of this defendant.

The Court: Well where did you keep that book?

A. It was kept in the regular office.

Q. In the regular office; who occupied that office?

A. Well, Mrs. Burdick and Mr. Badders and another young lady that was a bundle wrapper.

Q. Mr. Badders have access to the book?

A. Mr. Badders, yes sir.

The Court: Go on.

Mr. Hite: Except. (A copy of page 26 of Exhibit 39 is attached hereto and made a part hereof.)

Mr. Brady:

Q. You may read the entries on that page?

A. Twenty five per cent on sale of stock; twenty five hundred dollars; secretary's commission \$2,797.94; fifteen per cent on years' business, \$9,420; dividend, \$8,750; also, dividend \$4,158.54.

Q. What was the last one?

A. \$4,158.54.

Q. When were those entries made?

A. December thirty first.

Q. 1913?

A. 1913.

Q. Mr. Coulson were there ever any such entries as dividends or items of that kind made on that book during the time you had charge of it prior to that time?

Mr. Hite: Objected to as wholly immaterial and incompetent.

427 The Court: Well, were there any other dividends declared and entered on the books before that time. Counsel ought to know whether there was or not; if not, no use of wasting time here.

Q. You made that entry at that time?

A. Yes sir.

Q. Did you ever make similar entries in that book?

A. I see December tenth, and one December 31, 1913.

Q. What was the entry of December tenth?

A. That was the twenty five per cent on sale of stock.

Mr. Hite: We object to the statement by the witness of that entry for the same reasons heretofore given as to the other entries.

The Court: Same ruling will be had.

Mr. Hite: Except.

Mr. Brady:

Q. Mr. Coulson have you examined that entire book?

A. Yes sir.

Q. And you know it to contain what, for the purpose of identifying the book only; I do not call upon you to state what it is; I mean does it contain the ledger statements of what was owed and what was paid by Mr. Badders or the Badders Company rather?

The Court: Objection to that sustained. The book itself will be the best evidence of it, if you want to offer it.

Mr. Brady: We offer the book in evidence at this time, the entire book.

Mr. Hite: Before formulating our objection I would like to have an opportunity of objecting to the offer.

The Court: Go on and ask any other questions you want to.

Q. Now, in reference to salaries, were there any entries made in the month of November or December by you in reference to that?

A. Yes sir.

Q. Wish you would turn to the page of Exhibit No. 39 where that is shown? Have you the page?

Mr. Hite: Before the witness proceeds in this testimony, for fear we may be concluded in the matter, we desire to make our  
428 objection to the book; that it is incompetent, irrelevant and immaterial, and hearsay, as against this defendant; not shown ever to have seen the entries that are being referred to by the witness, or to have actually examined the book, and it is not a book kept by him, but by another, the Badders Clothing Company.

The Court: Were you in the employ of Mr. Badders; Mr. Badders have supervision to pay you your salary?

A. Yes sir.

Q. Know what you were doing?

A. Yes sir.

Q. Had an opportunity of seeing your books and the entries in them?

A. Yes sir.

The Court: Overruled.

Mr. Hite: Except.

Mr. Brady:

Q. Mr. Coulson I wish you would read to the jury what is contained upon page twenty of Exhibit thirty nine; what page have you?

A. Page twenty.

Q. I wish you would read the entries made there by you on page 20 in reference to salary.

Mr. Hite: Same objection as to page 26.

The Court: What is the date of your entry?

A. The date of my first entry is May 31, 1913.

Mr. Brady: What was that?

Mr. Hite: Objected to as immaterial.

The Court: Overruled.

Mr. Hite: Except.



The Court: What you want to do Mr. District Attorney is to find out what the salaries were during the time and whether increased? Trying to show by this book what the salary of these men were at that time and then show what the salary amounted to in December?

Mr. Brady: Yes.

429 The Court: Go on. Read the salaries for each month.

A. May 31, \$842.50.

Q. Give the year?

A. 1913. June 30, \$1,602.75; July 31, \$791.75; August 30, \$1,211.16; Sept. 30, \$1,305.50; October 31, \$2,046.50; November 29, \$4,531.05; December 31, \$8,269.43.

Q. Are those all of the entries in reference to salaries covering that period?

A. Yes sir.

Q. Now was there any other entries made by you in large amounts for either dividends or commissions?

A. No sir.

Q. Do you know what page of the ledger you would find the entry in reference to commission on sale of stock?

A. That was on page twenty six.

Q. That was the one you read?

A. Yes sir.

Q. Were there any entries made in reference to commissions on all sales over fifty thousand dollars?

A. I don't know of any, there were two dividends there, commission and dividend account opened up there.

Q. What pages are they on?

A. Twenty six; I read those before.

Q. Well there was one I didn't think I heard you read? I wish you would read that again.

Mr. Hite: Object to any repetition of it Your Honor, if this matter is in evidence; I understand the court has ruled these pages are in evidence.

The Court: Well, the District Attorney wants to find out whether he knows what he had read or didn't read; I suppose it is really an objection to that.

Mr. Hite: I didn't so understand that was his purpose.

The Court: That is what he said, he didn't understand and repeated the question.

Mr. Brady: Please answer the question.

430 A. Twenty five per cent on sale of stock, \$2,500; secretary's commission, \$2,797.94; fifteen per cent on year's business, \$9,420.; and there is a dividend \$8,750; also, another dividend \$4,158.54.

The Court: Totalling how much?

A. Total, \$27,626.48.

Mr. Brady:

Q. Was that all in the month of December, 1913?

A. Yes.

Q. Now do you know whether that book contains the amounts due to all of the eastern creditors of the Badders Company for goods received by it in the course of business?

A. So far as I know.

Mr. Harkless: The question is do you know?

Mr. Brady: Answer that yes or no?

A. No.

The Court: Well when you got goods from houses east or anywhere else, what did you do, make an entry in the book?

A. The lady made an entry.

Mr. Brady:

Q. From the records made by Mrs. Burdick what did you do?

A. From the records made by Mrs. Burdick or Miss Bundy I posted the totals to this ledger each month.

Q. Now I wish you would begin with the month of May, if you know what page that is, and read that from May till December 30th.

Mr. Hite: We make the same objection as made heretofore to the entries on pages twenty six and thirty nine, if I remember the pages rights, as well as page twenty; objected to as incompetent, irrelevant and immaterial, hearsay as against this defendant, and not shown these entries have ever been brought to his attention, and not original entries.

The Court: Overruled.

Mr. Hite: Except.

Mr. Brady:

Q. What page?

A. Three.

Q. Please read it?

431 A. My entries on it?

Q. For goods received.

A. May 31, \$3,132.67; June 30, \$3,517.03; July 31, \$1,414.80; August 31, \$8,704.45; Sept. 30, \$9,259.17; Oct. 31, \$9,895.02; November 29, \$16,431.79; December 31, \$22,959.66.

The Court: What is the total?

A. The totals are figured up here with all the purchases above made.

The Court: Go on, I don't want to interrupt you; I thought you had that.

Mr. Brady:

Q. Have you the total there?

A. I have full total for the year including the inventory of the year before, is the way it is added up.

Mr. Hite: We ask the witness' testimony be confined to what appears in the book, and not his totals that he now makes on it.

Mr. Brady:

Q. Does that show the invoice of January first or December 31st the year before?

A. What the inventory was the year before?

Q. 1912?

A. Yes sir.

Q. December 31, 1912. What was it?

Mr. Hite: We think that is incompetent and hearsay, if Your Honor please, as to what this book purports to show as to any inventory in that store; it is not the best evidence; hearsay; not the original evidence.

The Court: I will let him state what the inventory was?

Mr. Hite: Except—

A. December 31, 12, \$42,288.32.

Q. Now what was the total, including that, for the year's purchases?

A. \$135,741.91.

Q. How many years' experience have you had at bookkeeping?

A. About twenty five, twenty six.

Q. Continuously?

432 A. No sir, not continuously.

Q. Most of the time?

A. Most of the time I have been bookkeeping.

Q. Have you examined that ledger for the purpose of ascertaining the total amount of debts or money due for purchases of clothing from eastern firms?

A. Yes sir I did.

Q. And from your knowledge as a bookkeeper and your examination of that book are you able to state what that amount is as shown by the book at the end of the month of December, 1913?

A. Yes sir.

Q. I wish that you would state what that amount is?

Mr. Hite: Objected to as incompetent, irrelevant and immaterial; hearsay; and this defendant is not bound by the statement of the witness nor is there any testimony that the defendant ever heard of what the witness is asked to testify about.

The Court: Overruled.

Mr. Hite: Except.

A. The eastern accounts \$70,781.98.

Q. Have you made from that book a complete list of the names of all of these creditors and the amounts due them?

A. Yes sir.

Q. Is that what you have in your hand?

A. Yes sir.

Q. You know that statement to be correct?

A. To the best of my knowledge and belief it is correct.

Q. Have you made a careful examination and checking of it?

A. I have, yes sir.

Q. Who did you make that out for?

A. I made that out for the business as I usually did each month.

Q. And that was under the directions of Mr. Badders, was it?

A. It was under the direction of Mr. Frankenstein, I believe, when he left there, that I take the books.

Q. It was a rule of business in that place of business?

433 Mr. Hite: Objected to as leading.

The Court: Now you made out the list of liabilities there for goods purchased during the year 1913? Did you?

A. I did, yes sir.

Q. Well did you make out a list of them?

A. Each month, yes sir.

Q. Each month; show it to Mr. Badders?

A. Yes sir.

Q. He knew it?

A. Yes sir.

Q. And knew how much it was?

A. Yes sir.

Q. Show him the names of persons to whom you were indebted?

A. Yes sir.

The Court: Overruled.

Mr. Hite: Except.

Mr. Brady.

Q. Is that paper which you hold in your hand, marked Exhibit No. 40, one that you made out for Mr. Badders at the end of the year 1913?

A. Yes sir.

Q. Did you give it to him for his examination?

A. I did.

Mr. Hite: We ask that counsel be confined to what the witness did in the matter, not leading him in that manner.

The Court: Did you furnish that list to Mr. Badders?

A. Yes.

Mr. Brady: Exhibit No. 40 is offered in evidence.

Mr. Hite: We object to the statement, or list or exhibit, for the reason that it is a mere declaration of the witness of the contents of some written book or paper, and is not competent as against this defendant, and is hearsay and it is secondary evidence, if good at all.

The Court: Objection overruled.

Mr. Hite: Except.

The Court: Go on and state it, you may name the amounts and go over the list.

434 Mr. Brady: Probably I can read it faster than the witness. Reading Exhibit No. 40. (A copy of Exhibit No. 40 is attached hereto and made a part hereof.)

The Court: At what time in the year 1913 did that cover, the indebtedness at the time was that amount at what time?

A. December 31, 1913.

The Court: December 31, 1913, that was the amount of the indebtedness?

A. In this book, yes sir.

The Court: And you furnished a copy of that to Mr. Badders?

A. Yes sir, I leave this copy on the desk where he can see it, yes sir.

Mr. Hite: If your Honor please, I desire to interrupt the Court to put in the objection which we have noted, to the same effect to the court's questions as to counsel's questions.

The Court: I wanted to find out the indebtedness on the last of December 1913.

Mr. Hite: We think the inquiry is proper, but this testimony incompetent to that point; the object is not to obtain the declaration of this witness as to what the indebtedness was, but the fact itself, and for that reason we think the testimony is hearsay and not the best evidence.

The Court: The Court differs with you about that.

Mr. Harkless: Your Honor has just asked him to state what the indebtedness was.

The Court: I asked him whether the book he has spoken of, whether that amount of seventy thousand dollars, correctly represents the indebtedness of the Badders Clothing Company in December 1913.

Mr. Harkless: That is what we object to. He knows nothing about it whatever.

The Court: I have ruled upon it and I don't propose to have any discussion about it.

Mr. Hite: Except.

Mr. Brady:

Q. Now Mr. Coulson, do you know whether or not that  
435 book contains any account in reference to any amounts that the Badders Clothing Company or Mr. Badders himself might owe to any of the banks or to any one for borrowed money; are there any such accounts in that book?

A. Yes sir.

Q. I wish you would turn to those. What page of Exhibit 39 do you find one of those accounts.

A. Twenty four.

Q. Page twenty four?

A. Yes sir.

Q. Now covering the time from May 1913 to the end of the account in that book I wish you would read what is contained therein?

Mr. Hite: We ask that the same objection be noted in the record, and the same ruling, I suppose.

The Court: I suppose this inquiry, Mr. District attorney, has reference to the indebtedness?

Mr. Brady: Yes sir, Your Honor.

The Court: Of this Badders Company.

Mr. Brady: And the defendant here.

The Court: The Badders Company and the defendant; go on and state what it is, if you know?

Mr. Hite: Same objection.

The Court: Overruled.

Mr. Hite: Except.

A. Commencing in December or January first, 1913?

Q. Beginning from where you made the entries?

A. From where I made the entries; Note for \$118.07.

Q. Give the dates, if you can?

A. May 10. May 18th, a note of one thousand dollars; June 30, two hundred and fifty dollars; seventeenth, one thousand dollars; twenty fifth, five hundred dollars; August fourteenth, five hundred dollars; November 29th, seven thousand dollars, and December fourth, two thousand dollars.

Q. That is 1913?

A. Yes sir.

Q. Do you know whether there are any accounts in that, any other accounts, or any other account in that book where bills payable—

A. This is bills payable I have been reading.

Q. That is the bills payable?

A. Yes, but there is on the debit side of that also, there is an offset to those things I have been reading.

The Court: Any indication in that book to show at any time any of those bills payable were paid?

A. Yes sir.

Q. State that; let's get the whole fact with a view of finding out the net result.

A. My work here is, May 31, \$158.94; June 18, \$200.

The Court: You have given the bills payable, the amount of them and the dates when the bills were made; now can you state on the first of December of 1913 what outstanding bills payable there were in that book?

A. Yes sir.

Mr. Hite: Same objection.

The Court: Overruled.

Mr. Hite: Except.

A. Want it in total?

Q. Yes?

Mr. Robertson: If Your Honor please, I think the point is not understood by the court, perhaps, that we sought to make by this witness; that these accounts as shown here in Exhibit No. 40, there never was any payments of any sort, kind or character.

The Court: You offer them; now you want to add to that indebtedness of accounts that were not paid by showing what bills payable the bank were; I want to find out what these bills payable were with a view to finding out what the entire indebtedness is; that is what I am trying to find out.

Mr. Harkless: We desire to except to the statement of fact just made by the District Attorney, that no payments were ever made on them.

The Court: The jury will not consider anything in this case but the evidence, I don't care whether it comes from

the District Attorney or the other side; it is perfectly competent for him to show if any of these bills have been paid.

Mr. Harkless: We are asking the jury be instructed not to consider it.

The Court: I will not instruct the jury now; I shall instruct the jury in the end as to what they shall consider.

Mr. Brady:

Q. Was there a balance due on those bills payable December 31, 1913?

Mr. Hite: To which we ask that Your Honor permit the same objection.

The Court: Overruled.

Mr. Hite: Except.

The Court: I understand this testimony is to show this entire liability of this Badders Company at a certain time.

Mr. Harkless: We have no objection if shown in the proper way, but our objection is this does not show anything of the kind as against the defendant.

The Court: Go on and state how much it is.

A. \$10,475.01.

The Court: That was amount due December 31st on bills payable?

A. Yes sir, that is what this book shows.

Q. Well is there any other indebtedness from that concern besides the bills payable account and seventy thousand dollars for goods that you know of?

A. No sir.

Q. So that you would say the total amount of indebtedness, bills payable and goods purchased, is eighty thousand dollars or thereabouts?

A. Yes sir.

Mr. Hite: Object for the same reasons as heretofore stated.

The Court: If there is any reason why that is not correct you may show it, but I want to find out what this witness knows  
438 about the liabilities.

Mr. Harkless: This is not your witness' statement; it is the book; the witness does not know anything about it.

The Court: The jury will be able to ascertain whether the witness was speaking from a book, the entries of which were known by this defendant.

Mr. Brady:

Q. Mr. Coulson does that book show the amounts of the debts that the Badders Company or Mr. Badders owed in Topeka and other accounts than eastern accounts?

Mr. Hite: Objected to as leading.

The Court: Do you know of any other accounts he did owe besides this amount you have just stated?

Mr. Harkless: Object to that as purely a statement of this wit-

ness; Your Honor, just a moment, let's see if we understand each other.

The Court: Well if you will just be as patient as the court must be in this matter, we will understand each other before we get through. The question is asked of this witness by the District Attorney as to whether he knows of his own knowledge of any other indebtedness——

Mr. Harkless: You mean outside of the books?

The Court: Other than this amount you have just stated. If he knows he may state it; or if you know, you might state if put on the witness stand.

Mr. Brady:

Q. Did you answer that question?

A. Have not yet sir.

Q. Please answer it?

A. I don't know, no sir.

Q. Now for the purpose of refreshing your recollection I will ask you if you know anything about whether there were any accounts due or amounts due to Guggenheim, or to the Stein-Bloch Company other than the account stated on that Exhibit No. 40?

A. No.

Q. No such an account in that book?

439 A. No sir.

Q. Now Mr. Coulson, besides your work on the book there, I will ask you to examine Exhibit No. 41 and state if you know in whose handwriting the signature is to Exhibit No. 41?

A. Yes sir, that is my handwriting.

Q. How did you come to sign that?

A. I was asked to do so by Mr. Badders.

Q. Did you sign more than that one?

A. I think I did, yes sir.

Q. Can you tell the jury or give them an estimate of how many of those you signed?

A. No sir.

Mr. Harkless: Let us see them first.

Mr. Brady:

Q. Have you any judgment as to how many of them you signed?

A. I have not, I do not remember.

Mr. Harkless: Wait a moment Mr. Coulson.

Mr. Brady:

Q. Do you know what was done with this Exhibit No. 41 after you signed it?

A. I do not.

Q. Did you hear Mr. Badders say anything about what this was signed for?

A. I think not.

The Court: Let me see that paper. Go on.

Mr. Brady: We offer Exhibit No. 41 in evidence.



The Court: You say that paper was signed by you?

A. Yes.

Q. And at the instance and request of Mr. Badders, the defendant here?

A. Yes sir.

The Court: Read it.

Mr. Harkless: Objected to as incompetent, irrelevant and immaterial; hearsay; not having any bearing upon any of the issues in this case.

The Court: Overruled.

440 Mr. Harkless: Except.

Mr. Brady: Reading Exhibit No. 41.

(A copy of Exhibit No. 41 is attached hereto and made a part hereof.)

The Court: Where was that letter written, do you know?

A. I don't know. I didn't see it written.

Q. Who handed it to you?

A. They were handed to me, I don't know whether handed to me or not.

Q. You got it; what did Mr. Badders say to you about it?

A. I don't remember he said anything.

Q. What did he ask you to do?

A. Asked me to sign his name to them.

Q. Asked you to sign his name to them and you did?

A. I did.

Mr. Brady:

Q. What else did you do with them?

A. I don't think I did anything else.

Q. Do you know what Mr. Badders did with them?

A. I don't know.

Q. Ever know of his making use of any of them for any purpose?

A. No sir.

Q. Did you see him sign any of them?

A. I don't remember. I don't remember whether I ever saw him sign any of them or not.

Q. Now Mr. Coulson is there an account in that ledger that shows the sales from the month of May down on to the end of the year 1913?

A. Yes sir.

Q. I wish you would open Exhibit No. 39 at that page and tell me the number of the page? Did you make those entries there?

Mr. Hite: Let's get the page.

A. From May 31, yes sir, I made the entries.

Q. What page?

A. Page three.

Q. Read the monthly total sales?

441 A. May 31—

Mr. Hite: Same objection.

The Court: Overruled.

Mr. Hite: Except.

A. May 31, 1913, Cash sales, \$4,852.64; charge sales, \$3,498.07; June 30, cash sales, \$5,037.21; charge sales, \$3,231.33; July 31, cash sales, \$4,647.01; charge sales, \$2,907.13; August 30, cash, \$3,316.71; charge sales, \$1,695.34; Sept. 30th, cash, \$4,780.68; Charge sales, \$2,792.96; October 31, cash sales, \$4,279.80; charge sales, \$3,970.94; November 29, cash sales, \$4,184.07; charge sales, \$2,934.93; December 31, cash sales \$36,825.66; charge, \$285.53.

Q. Is there any account in that book which shows the amount of goods sold and charged during those months?

A. Sold and charged?

Q. Yes sir?

A. That is just what I read.

The Court: He gives the cash receipts and charge amounts.

Mr. Brady: I understood the witness.

The Court: Both are given.

Mr. Brady:

Q. Is there an account there that shows the collections from accounts?

A. Yes sir.

Q. Turn to that. Before you do I wish you to go back to page three and give total amount of year's sales, as shown by that page of Exhibit No. 39; read it.

The Court: You mean the total cash and charge account?

A. \$113,520. Close to that.

Q. \$113,520.

A. Some merchandise items in there.

Q. How much merchandise?

A. Close to one thousand dollars' worth of merchandise charged back there, may be twelve hundred, credit to merchandise returned.

Q. And the grand total is \$113,520.

42 A. Yes sir, near that amount, I would have to count it up to get it exact.

Q. Now Mr. Coulson I wish you would turn to Page — of Exhibit 39 that shows the collections on accounts due?

The Court: During that period of time?

Mr. Brady: Yes sir.

A. For the year.

Q. Yes sir.

A. Do you want it by months.

Q. Yes sir, and the total; give the page please?

A. Page four.

Mr. Hite: To this we offer the same objection as to the reading by the witness from the other pages.

The Court: Overruled.

Mr. Hite: Except.

A. May 31, \$2,595.53; June 30, \$2,402.91; July 31, \$3,020.05; August 30, \$2,835.41; Sept. 30, \$2,599.91; Oct. 31, 2,997.01; Nov. 29, \$2,942.95; December 31, \$2,203.09.

The Court: You have given the total amount of accounts charged; know the total amount of receipts?

A. The total amount of receipts.

Q. From the charged accounts?

A. \$28,913.84.

Mr. Brady:

Q. Now Mr. Coulson is there any account kept in that book that will show the expense, the various expenses to which the Badders Company were liable for, or paid or incurred, or alleged to have incurred by the book?

A. Yes sir.

Q. What page of Exhibit No. 39 do you find that?

A. Expense account here on page eight.

Q. Beginning with May 1913, I wish you would give those items.

Mr. Hite: Same objection to the reading by the witness from page 8 as to the previous pages.

The Court: Overruled.

Mr. Hite: Except.

443 A. May 31, \$98.24; June 30, \$113.46; July 31, \$84.36; August 30, \$98.36; Sept. 30, \$345.30; October 31, \$190.; Nov. 29th, \$497.93; Dec. 31, \$6,278.41.

The Court: What are those expenses for, if you know?

A. I don't know.

Q. That is the expense account?

A. That is the expense account.

Mr. Brady:

Q. Now Mr. Coulson, is there a rent account in that book?

A. Yes sir.

Q. What page of Exhibit No. 39?

A. Page eighteen.

Q. Please read what that page of Exhibit 30 contains in reference thereto.

The Court: What the rent was for the building?

A. Yes sir.

The Court: I understand both of you agreed it was five hundred dollars.

Mr. Brady: This is for the purpose of showing it was not paid.

The Court: Rent was not paid.

Mr. Brady: Yes.

The Court: Go on; Got good landlords up there in Topeka if it wasn't paid.

Mr. Brady: Please read that account.

Mr. Hite: Your Honor, we object, not to the fact of proving the rent, but the manner of proving it.

The Court: We will find how much the rent amounted to and how much of it was paid. Overruled.

Mr. Hite: Except.

A. June 30th, one thousand dollars; August 30th, five hundred dollars; July 30th, five hundred dollars; Aug. 30, five hundred dollars; Sept 30, five hundred dollars.

Q. What was the balance due or when was the last payment made as shown by the book?

Mr. Hite: Which question is it?

444 A. September 30th.

Q. What did you say, Sept. thirtieth?

A. September 30th; it is marked here 31st of Sept.

Q. Did you do that?

A. I presume I did, yes sir. Looks like my figures.

Q. Mr. Coulson did you have a conversation with Mr. Badders in the clothing store there before the store was taken charge of by the receiver about the goods?

A. Well I don't remember any special conversation we had.

Q. About any goods being returned to the store?

A. No sir.

The Court: In the first place, do you know of any goods going out of the store and returned afterwards?

A. I knew some were returned, I didn't know of any going out.

Mr. Brady:

Q. What goods do you know of being returned?

A. Some clothing.

Q. About how much?

A. Well, something near seven thousand dollars' worth, little more than seven thousand.

Q. Do you know what the brands of clothing were, who the manufacturers of them were?

A. Not all of them.

Q. Were they good grade of clothing?

A. Yes sir.

Q. Were they any better than the ones that were being used in that sale?

A. No, some just as good used in the sale.

Q. Now did you have a conversation with Mr. Badders in reference to the return of those goods?

A. I think not.

Q. For the purpose of refreshing your recollection, do you remember of any conversation with him in reference to what you might say or what any of you might say there in the store to the receiver Mr. Clark about those goods coming back?

A. No sir I never had any conversation with him.

Q. Well did you hear him talk to any one else about that?

445 A. No sir.

Q. Were you present when the receiver came into the store?

A. Yes sir.

Q. Were you present at the conversation where the receiver asked Mr. Badders about any goods having been returned?

The Court: Well, did you hear any conversation between the receiver and Mr. Badders at all?

A. No sir.

The Court: That ends that.

Cross-examination.

Questions by Mr. Hite:

Q. How long did you work for the Badders Clothing Company?

A. It was some time in November 1912 until the closing of the store.

Q. And for whom had you worked prior to November, 1912?

A. Palace Clothing Company.

Q. And how long had you worked for the Palace Clothing Co?

A. About thirteen years.

Q. And before that where had you worked Mr. Coulson?

A. I worked for Clements and Shaffer.

Q. How long did you work for them?

A. Nearly ten years, nearly that.

Q. So that you were ten years with Clements and Shaffer and thirteen years with the Palace Clothing Company?

A. Yes.

Q. And about two years with the Badders Clothing Company?

A. About a year and two months, November until January.

Q. A year and a few months.

A. Yes.

Q. Now what business was Clements and Shaffer engaged in?

A. Clothing and furnishing.

Q. And what did you do in that store?

A. I was bookkeeper and salesman.

Q. How much of your time was spent on the books?

A. Clements and Shaffer?

Q. Yes sir.

446 A. Probably two or three hours a day.

Q. Probably two or three hours a day?

A. Yes sir.

Q. And what books did you work on?

A. I kept all the ledgers at that time.

Q. You kept all the ledgers at that time?

A. Yes sir, all the books.

Q. That is, you kept the—did they have a cash book?

A. Yes sir.

Q. And a check book?

- A. Cash book, journal and ledger.
- Q. A general ledger also?
- A. Yes sir.
- Q. Did they have a ledger containing accounts with customers as well as accounts with certain firms?
- A. Yes sir.
- Q. Now what did you do at the Palace Clothing Company?
- A. I was bookkeeper there also.
- Q. How much of your time did you devote to the bookkeeping part of your duties?
- A. Practically all of my time.
- Q. Practically all of your time?
- A. Yes sir.
- Q. You didn't do very much selling?
- A. Very little.
- Q. And in the Badders Clothing Company what part of your time was devoted to the books?
- A. Possibly a couple of hours a month.
- Q. A couple of hours a month?
- A. Yes.
- Q. You mean you only spent two hours a month on the books for Coulson?
- A. That was about all, two to three hours I presume be all the time I would require.
- Q. And all of that two hours was devoted to this particular book as it Exhibit No. 39?
- A. Yes sir.
- 47 Q. You did no work on any other books there?
- A. No sir.
- Q. You knew nothing about any other books, did you except as you might see them?
- A. Well I might know something about the check book.
- Q. Did you draw any of the checks?
- A. I think I did, yes sir, in making out payments, eastern payments.
- Q. Making out what?
- A. Eastern payments.
- Q. Before you began doing any work on this ledger that has been offered in evidence here had you done any bookkeeping at all in the Badders Clothing Company?
- A. No sir.
- Q. Your work had not taken you into the office at all, had it?
- A. No, sir, I was only salesman.
- Q. Then if I understand your testimony your time was spent in the service of the Badders Clothing Company on the floor of the sales room, selling goods, with the exception of about two hours each month, is that right?
- A. Yes sir, I think so.
- Q. And that time was devoted to making entries on this ledger, that right?
- A. Yes sir.

Q. Mr. Coulson in making entries in this ledger, particularly in the matter of accounts with eastern creditors, from what data did you make those entries?

A. From a stock book usually furnished by one of the ladies.

Q. Sir?

A. For the eastern accounts?

Q. Yes sir.

A. They were posted from what they call a stock ledger or stock book.

Q. They were posted from another ledger, were they?

A. Yes sir.

Q. And who kept that ledger?

A. I think Miss Bundy kept it a while and also Mrs. Boyd.

448 Q. Do you know anything about the correctness of the entries that were made in that ledger?

A. I do not.

Q. So far as you know they might have been right or wrong?

A. Yes sir.

Q. Do you know anything about the transactions that those entries in the stock ledgers referred to, I mean of your own knowledge?

A. No sir, only being familiar with the names and the names of the parties that appeared there I would know what they were trying to do; they were posting a certain invoice of a certain article.

Q. What I am getting at Mr. Coulson, if you saw an entry in the stock book that indicated that there had been a purchase from some eastern house, I am asking you if you had any knowledge of the transaction of that purchase at all?

A. No sir.

Q. You took the figures that you put in this ledger from that other ledger?

A. That is what I did, yes sir.

Q. And you know nothing about the correctness of the other ledger or whether or not it correctly recorded the transaction about which the entry was made, do you?

A. I do not.

Q. Mr. Coulson do you know anything whatever about the indebtedness of the Badders Clothing Company of your own knowledge?

A. I only know what the books say.

Q. That is all you know about it?

A. Yes sir.

Q. And you only know what this particular ledger says, do you not?

A. That is all.

Q. Do you know from what the items were posted in this stock ledger by Miss Bundy, or whomsoever did the work?

A. They were invoices from the wholesale houses.

449 Q. Where were those invoices when the receiver took charge, if you know?

A. I don't know.

Q. Had you ever seen them?

A. Yes sir I had seen them.

Q. Had you ever compared those invoices with the entries that you made in this ledger?

A. No sir.

Q. Then as I understand it Miss Bundy would post in this stock ledger from the invoices?

The Court: Mr. Marshal, we have got to have order in the court sir.

Q. Then as I understand you Mr. Coulson, your understanding of the matter is that Miss Bundy, or whoever posted the stock ledger would take the figures with which she made the entries in that book from the original invoices, is that correct?

A. Yes sir.

Q. That is your understanding of it?

A. That is correct.

Q. And then you would post into this book from that stock ledger?

A. That is right.

Q. Meaning Exhibit No. 39?

A. Yes sir.

Q. Mr. Coulson were the invoices subject to a discount?

A. Yes sir, most of them were.

Q. Did you have anything to do with taking that discount off of the face of the invoices?

A. No sir.

Q. That was not part of your duty, was it?

A. No sir.

Q. As I understand, the extent of your employment by the Badlers Clothing Company was to post from this stock ledger into this ledger, in so far as the accounts with eastern dealers are concerned, is that correct?

A. Yes sir, that was a part of my book work.

Q. Now Mr. Coulson, perhaps the jury does not understand what an invoice is; will you please state what your understanding  
150 of an invoice is?

A. Why it is purchases made of an eastern firm, of hats, clothing, shoes, furnishing goods, or anything of that kind, and bills into a house.

Q. An invoice, as I understand you Mr. Coulson, is a bill of purchases made in the east, is it not?

A. Yes sir.

Q. And that bill represents a number of different items?

A. Yes sir.

Q. And in your business that was clothing and furnishing goods and stuff of that sort, was it not?

A. Yes sir.

Q. And carried out on that invoice would be the totals of each particular class of items; that added up made the total of the bill, is that correct?

A. That is correct.



Q. And I understand you to say those totals were subject to discounts?

A. Yes sir.

Q. And that you had nothing whatever to do with the discounts, is that true?

A. When they reached payment I sometimes had something to do with them.

Q. When they reached payment; but as to how much or how little discount there would be that was a matter with which you had nothing to do, is that a fact?

A. Yes.

Q. Now in this list that you have been asked about by the government, are there any discounts, deductions or subtractions taken off from those figures?

A. No sir.

Q. Then those figures that you have given here would be subject to some discount, about which you know nothing, is that a fact?

A. They would.

Q. In a certain contingency?

451 A. On a certain date be subject to discount.

The Court: In that connection, explain to the jury when was this discount allowed, before the account became due or afterwards?

A. The discount was allowed at the time the debt became due; clothing bills would run sixty days to four months.

The Court: If they ran over due then no discount?

A. That is it.

Mr. Hite: We think, Your Honor, with deference to the court, we must object to the question; the witness has not shown himself qualified to speak as to these particular matters, and the custom otherwise would not be competent here, and with Your Honor's permission I will go on with the matter and inquire into that very matter.

The Court: Go on.

Q. Now as to these particular matters, Mr. Coulson, that are covered by your list that has been introduced in evidence here as Exhibit No. 40, I understand you to say that those are totals subject to discount?

A. A great many of them are; some bills come net.

Q. You don't know which of those were net and which were subject to discount, do you?

A. No I couldn't tell now.

Q. You couldn't tell that?

A. No sir.

Q. That was a matter that you had nothing to do with, isn't that a fact? As to how much or how little discount would be taken off?

A. Until it came to payment I didn't know.

Q. Is it a fact Mr. Coulson that the question of the deductions to be made from these totals was the subject of agreement between Mr. Badders, as the executive officer of the company and these creditors from whom the goods were purchased?

A. Yes sir.

Q. You had nothing whatever to do with that Agreement, did you?

A. I had not, no sir.

452 Q. Do you know of any instances where the discount from the face of the invoices has been as high as thirty three and one third per cent?

A. Yes sir.

Q. In such a case as that, pursuing your usual course, you would have put down the amount due that particular creditor as the total sum without deducting that thirty three and one third per cent would you not?

A. No sir.

Q. You would not?

A. No sir.

Q. But you would deduct the discount in that particular case?

A. Yes sir.

Q. Before you entered it to the credit of the creditor? Was that what you would do?

A. Want me to tell you the way the invoice usually comes in subject to thirty three and one third per cent discount?

Q. No. I think I can get at that perhaps just as clearly the other way; as I understand you, you had nothing to do with these invoices, is that a fact?

A. That is a fact.

Q. You didn't post into this ledger from those invoices, at all, did you?

A. I did not.

Q. Do you know what if any instructions were given by Mr. Badders to the person in the company's service who did post those invoices in the stock ledger?

A. I don't know what advice he gave them no sir.

Q. Do you know whether or not there were any discounts taken off of any invoices before the amounts were posted in the stock ledger?

A. No I can't recall that there were.

Q. Then so far as your duties were concerned and what you were employed to do, was to set down in this ledger the amount of the invoices as you got them through this stock book? And that is all?

A. That is all; yes sir?

453 Q. Mr. Coulson were you not engaged at the time the receiver took charge in trying to give Mr. Badders a statement of the financial condition of the Badders Clothing Company.

A. I was getting out a trial balance, yes sir, at the end of the month.

Q. You were engaged in that work at that time, were you not?

A. Yes sir.

Q. Do you know whether this ledger had been balanced so as to determine whether it was correct, or not, at any time after the sale began and before the receiver took charge?

A. It had not.

Q. It had not?

A. No sir.

Q. Mr. Coulson tell the jury whether it is necessary to determine the correctness of a ledger that it should be balanced?

A. Yes it should be, and it should be balanced to be correct.

Q. Now this sale was a busy time, the period of this sale was a busy time in the Badders Clothing Company, was it not Mr. Coulson?

A. Yes sir.

Q. There were a number of persons employed there in the conduct of the sale, employes of various kinds, is that not a fact?

A. There were, yes sir.

Q. Additional help was there, was that not true?

A. That is true.

Q. The store was opened early and kept open later than usual was it not?

A. No, I think it was opened later and probably kept open later, but it was opened a little later than usual on sale days.

Q. State whether or not the expenses of conducting the store during this sale were not very much larger than was ordinarily the case?

A. Yes, I think they were heavier on account of the extra employes.

Q. Do you know of the fact that a percentage on the  
454 amount of the sales was paid to the sales managers that were there?

A. I was aware of the fact that they were to be paid. I don't know anything about what amount.

Q. But knew there was something of that kind to be paid?

A. I knew there were some sales managers there at work.

Q. Do you know of any bonuses being paid to salesmen who would be active at that sale?

A. Aside from regular salary?

Q. Yes sir?

A. Yes sir.

Q. Mr. Coulson do you know whether or not these entries that were put in the dividend and commission account had been the subject of any conversation between Mr. Badders and Mrs. Burdick, that they were put in there merely for the purpose of finding out what the situation was with those charges made? Did you hear any talk of that kind?

A. I did not.

Q. That would not have come under your usual course of duties would it?

A. No sir.

Q. Did you have time during the sale to make any entries in the ledger?

A. No, I think it was later in the month.

Q. How much later?

A. I couldn't say, possibly it may have been from the fifth to the eighth, along there of January when I was working on the ledger, I can't remember the time I did make it up.

Q. It may have been as late as the middle of January before you really got settled down to work, might it not Mr. Coulson?

A. I hardly think it was that late.

Q. Hardly think it was that late, but at the time the receiver took charge you had not then balanced the ledger?

A. No sir, it was not balanced.

Q. Had these entries been checked to see whether they were correct?

A. I had checked them back.

55 Q. When did you do that work?

A. Just as soon as I found the ledger didn't balance I would check back to discover the error.

Q. I was trying to find the time in January when you began checking back?

A. I don't remember.

Q. Can you give us any idea at all?

A. I cannot.

Q. Do you recall the circumstances of a filing of a petition in bankruptcy against the Badders Clothing Company?

A. Yes, but I don't know about the date.

Q. Well can you tell whether after the petition was filed you were still at work on this ledger or not?

A. No I don't know.

Q. You don't remember. You might have been or you might not have been?

A. Yes sir.

Q. Mr. Coulson are you able to state about what would be the general average profit made by retail clothing men in the carrying on of their business.

Mr. Brady: Objected to as not cross examination.

Mr. Hite: If Your Honor will pardon me a moment, it may have tendency to throw some light on the matter that the jury has been advised of as to these sales.

The Court: I don't think it grows out of the examination as to what he knows about it generally, or anything asked him on the chief examination.

Q. Mr. Coulson, do you know about what was the average profit made by the Badders Clothing Company in the transaction of its business from the time you took charge of this book?

A. I do not.

Q. Would you say that it was as much as twenty five per cent?

Mr. Brady: Objected to as not cross examination.

The Court: He says he don't know anything about it; had not a about it.

Q. You were selling clothing there, were you not, Mr. Coulson?

A. Yes sir.

3 Q. Were you able to tell from the cost marks or any marks on the goods that you were selling how much profit was being made?

A. No sir.

Mr. Brady: Objected to as not cross examination.

The Court: He has answered.

Q. You couldn't tell from that at all, could you?

A. No sir.

Q. What marks were there on the goods that you were selling?

Mr. Brady: Same objection.

The Court: He may answer if he knows.

A. Selling price.

Q. Nothing but the selling price?

A. And the stock book price, stock book number on the tickets.

Mr. Hite: If Your Honor please, the defendant would ask leave to recall this witness for further cross examination after having had an opportunity of looking at the accounts in the Exhibit No. 39, to which the witness' attention has been called. And with that reservation—

The Court: Anything growing out of this cross examination you desire to ask about?

Mr. Brady: One or two questions.

Redirect examination.

Questions by Mr. Brady:

Q. Mr. Coulson, do you know anything about this thirty three and one third per cent discount, or do you know that such a discount is ever made on the books or entered on the books, that Mr. Hite was talking about?

A. Sometimes on the invoice, yes.

Q. And when such a discount as that is made on goods that is deducted from the bill or invoice before it ever gets on to the books?

A. It is.

Q. Yes, and that was the rule of the Badders Clothing Company?

Mr. Hite: Objected to as leading. Asked the witness what the fact is?

The Court: I understand this witness to say that he had  
457 some knowledge of the accounts that were to be so discounted and that he entered on the book the amount due after taking off the discount, is that true?

A. Shall I tell the way the invoices come from the wholesale houses usually?

The Court: Explain that. You got an invoice and when you got an invoice of the goods that was subject to a discount; what did you do about the discount on entering on the books?

A. They come billed in full; if three hundred suits at three dollars a suit it is nine hundred dollars, less thirty three and one third per cent, and it is deducted before invoice is entered on the ledger, deducted by the wholesale houses.

The Court: Well did you know of your own personal knowledge of the goods that was to be so discounted?

A. No sir; well the invoices came from the houses that way.

The Court: The invoices came from the houses that way; al-

though the invoice might be for nine hundred dollars you would take the discount off and enter for one third less?

A. They were billed by the wholesale house at regular price and the thirty three and one third per cent deducted.

Mr. Hite: The point I am raising now, Your Honor, is, the witness has testified he knew nothing about that and his employment in the Badders Clothing Company did not cover that proposition, and therefore his testimony is not competent as against this defendant.

The Court: When you went to make entries in the book of the true amount, how did you ascertain that?

A. Well I hardly ever made an entry in the book except in totals at the end of each month; might be one hundred invoices; I only entered the totals in that ledger.

Mr. Hite: We ask that the testimony of the witness concerning the matter of the invoices be stricken out as incompetent, irrelevant and immaterial and hearsay, and not binding on the defendant.

The Court: Well you asked about it; you asked if he didn't get certain goods that were to be discounted thirty three and one third per cent; he said yes. Well now this inquiry is as to how  
458 that entry was made in his book, whether made from the correct amount after the thirty three and one third per cent was deducted, or whether it went upon the books in the whole amount?

Mr. Hite: If Your Honor please, and in all deference to the Court's remembrance of the testimony, I think my question to the witness was whether he knew of any case in which there was a discount of as much as thirty three and one third per cent, and that interrogation was immediately followed by asking the witness if he had anything whatever to do with these invoices and the fixing of the total amounts of them, and he said no.

The Court: He answered you in the first place yes.

Mr. Hite: He knew of such an instance as that.

The Court: Objection overruled.

Mr. Hite: Except.

Mr. Brady:

Q. Now Mr. Coulson when are discounts allowed?

A. Well, usually sixty days, furnishing goods, sometimes thirty days.

Q. Well is that all that is necessary to happen, just sixty days roll around?

A. Yes sir.

Q. Nothing else?

Mr. Hite: Objected to as not binding on the defendant in any manner, whatever, as to what this testimony is as to what may be the case in some particular matter.

Mr. Brady: Does the bill have to be paid in order to obtain the discount.

Mr. Hite: Same objection.

The Court: Answer.

Mr. Hite: Except.

The Court: Well, you undertake to explain to the jury what is meant by a discount, and he says if this debt is paid by a certain time, or before a certain time, it is subject to a discount, and if not paid at that time, the discount is not allowed.

Mr. Brady: Is that what I understand to be your understanding?

459 A. Yes, that is right.

Q. Did you ever get a trial balance on those books?

A. No I never got a balance.

Q. Now Mr. Hite asked you about bonuses, were any bonuses allowed to salesmen in that store during the sale?

A. Yes.

Q. To whom?

A. Myself for one.

Q. How much?

A. Twenty five cents, fifty cents, on a suit.

Q. Do you know how much it would amount to in the course of a month? How much you got out of it during the sale?

The Court: Did that bonus that you speak of, was that carried forward so as to get the exact amount of the expense of that month's work?

A. Yes sir.

Q. Was it added to your sales?

A. No it was given each day to us.

Q. Each day; well did they enter it in any wise in the expense account.

A. It was carried as a salary account I think?

Q. So if you were getting six hundred dollars a year you added to the six hundred dollars the bonus that you were given and that was entered on the books as part of your salary account?

A. Sometimes carried as expense and sometimes salary account.

Mr. Brady:

Q. Now Mr. Coulson was it just during that sale month of December that you got the bonuses?

A. No sir, there were other times we got it.

Q. What other times?

A. Well all through the dull season any extraordinary line of suits that don't move good, put what the boys usually call "spiff on me" or a P. M. on it.

The Court: Pay me. Didn't have any I-O-U's or anything.

460 Q. Mr. Coulson that then would be added to your check at the end of the month?

A. No, usually got that each night.

Q. And the salary account then would show that expense?

A. Well, sometimes carried that way and sometimes go to expense or salary account.



Q. Put it to expense account sometimes and sometimes to salary?

A. Different houses carry it differently.

Q. How did you do it in this case?

A. I don't know how they handled it there, I don't know whether Mrs. Burdick carried it as expense or on salary rolls; I never carried the items, just posted the total.

Q. You know how many clerks there were in that store that got these bonuses during the sale in December?

A. No I don't, I couldn't say for sure, must have been twenty, twenty five salesmen there that did.

Q. Have you a judgment as to what it would amount to in your case per month during that sale?

A. During that sale I think I got about twenty, twenty two dollars, somewhere along there.

Q. And do you know how many clerks there were there in the store?

A. Don't know how many clothing clerks there were.

Q. Have you a judgment as to how many clerks were there in the store during the sale?

A. No sir, I have not, I don't know, must have been twenty five or thirty of them.

Q. Did they all get bonuses?

A. Only clothing salesmen I think.

Q. How many clothing salesmen were there in that institution?

A. Sixteen to twenty in there during a large part of the time, in my judgment.

Recross-examination.

Questions by Mr. Hite:

Q. Coming to this discount again Mr. Coulson, suppose there should appear upon the face of an invoice seven, ten, sixty days?

461 A. Yes sir.

Q. What would that mean?

A. That would mean six per cent discount payable in seventy days, sixty days, or ten off, give seventy days to get the six per cent discount.

Q. Would that six per cent discount come off this gross amount of the invoice?

A. Not usually, generally entered in total.

Q. So that wherever there was a discount off the bill if it was paid within the time stated on the invoice the percentage of discount would not be taken off of the total; isn't that true?

A. That is true, in a regular bill.

Q. So if there was a bill sold with thirty three per cent off if paid in sixty days, the thirty three and one third per cent would not be subtracted from the total, isn't that true?

A. I never saw one billed that way.

Q. I didn't ask you that Mr. Coulson; I say would that be the result of that sort of an invoice? You don't know, do you?

A. No sir, I don't.

(Witness excused.)



HERBERT DALE, called as a witness on behalf of the plaintiff, having been first duly sworn, testifies, as follows:

Direct examination.

Questions by Mr. Brady:

Q. Where do you live Mr. Dale?

A. Topeka, Kansas.

Q. And what is your business?

A. Manager R. G. Dunn & Co.

Q. Were you manager of that company during the year 1913?

A. Yes sir.

Q. Did you know the defendant, George S. Badders?

462 A. Yes sir.

Q. Did you see him frequently during that year?

A. Yes sir.

Q. Especially during the months of November and December, 1913?

A. Yes sir.

Q. Did you upon any occasion have conversations with him relative to his business and the business of the Badders Clothing Company?

A. Yes sir.

Q. What was your purpose in going there; why did you go there?

A. I went there with the object of obtaining information for the use of the agency.

Q. Did you obtain any information?

A. Yes sir.

Q. Did Mr. Badders ever make a signed statement, financial statement to you?

A. No sir.

Q. Did you ever ask him for one?

A. Yes I did.

Q. What did he say?

A. That was—well, he refused to make statements each time I went to see him, but the time that I particularly asked for a statement, on December 3, 1913, he didn't seem inclined to give me one.

Q. What did he say?

A. On December third, 1913, he called me up at my office some time during the day and asked that I go down to see him. I went down to see him and he spoke to me relative to the sale which was to take place a couple of days from then; he informed me that in about two days "I will hold a sensational sale here," he says, "I am going to close my doors and I will open up and have a sensational sale." And at that time I asked him whether he would make a statement, and he didn't care to do so, claiming he would be able to make one later, after his inventory was made.

463 Q. What else did he talk to you about on that occasion?

A. I went to see him, I spoke to him at the same time about the increase of capital stock.

Q. How did you learn of that?

A. Through the secretary of State's office.

Q. What did you say to Mr. Badders and what did he say to you about the twenty five thousand capital increase?

A. I asked him what the increase in capital consisted of and he informed me it consisted of notes which he claimed he would not be able to realize upon before the new year; he intimated, however, that the notes were actually paid in and represented increased capital.

Mr. Harkless: I object to that statement, as to what he intimated, and ask the court to strike it out.

The Court: What did he say?

A. He said the notes represented increased capital.

Mr. Brady:

Q. Did he state who it was had given the notes?

A. No sir.

Q. Did you ask him?

A. I did.

Q. What did he say?

A. He said that he didn't care to give me that information. I can't say in what exact words he said it, but he didn't give me the information.

Q. Did he tell you that he had given the notes?

A. No sir.

Q. Did he tell you that any one else had given the note?

A. He said that other parties had given the notes.

Q. Other parties?

A. Yes.

Q. Now what was the date and place of that conversation?

A. December 3, 1913.

Q. In his store?

A. In his store.

Q. Was that all of that conversation.

A. Well it was as far as I can remember, it was practically all.

464 Q. Did he make any statement to you in reference to what the sale was being held for?

A. He informed me it was his idea of having a sensational sale, and he told me that he hoped to realize thirty thousand dollars or more so that he could clean up his whole stock and start the new year then with a clean sheet.

Q. With a new stock?

A. With a new stock.

Q. Give any other reason why he was holding that sale, or was that all that was said on that subject, rather?

A. I think that was all.

Q. You remember anything else taking place in that conversation or being said?

A. As I said before I asked him for a statement and that came up in the conversation.

Q. What did he say to that in that conversation?

A. Well he made me a verbal statement at that time, we often get verbal statements.

Q. Do you remember what that verbal statement was; answer that by yes or not Mr. Dale? (To get our record straight.)

A. Yes sir.

Q. What was it?

A. He said he had assets at that time, exclusive of the notes in question, something like sixty two thousand dollars and that his liabilities were about twenty four thousand.

Q. That was on the third day of December?

A. That was on the third day of December.

Q. What else did he say to you in that conversation?

A. Nothing that comes to my mind right now.

Q. Did you have a talk with him at a later date?

A. Oh I think I saw him on one or two occasions afterwards.

Q. And did you approach him with a view of getting a statement?

A. I think I did, although I can't exactly remember the details, naturally we try to get one wherever we can.

Q. What I want to get at is, to get at all the conversations you had with him; when was the next conversation after December third?

A. I can't say.

Q. Do you remember of having one?

A. On one or two occasions afterwards.

Q. Now then tell about those?

A. Can't remember the details.

Q. Can you remember the substance of those talks?

A. Well, except that I went in, I think he promised me a statement on several occasions and I went in on several occasions with the object of getting the statement.

Q. Did you ever get it?

A. No sir.

Q. Well did you go to see him before December third?

A. I did.

Q. How long before?

A. Oh possibly in January of that same year, January of that year, when I compiled a new report.

Q. Now in 1913, in December in the month of December, can you give the substance of any other conversations other than the one on the third?

A. I don't think I can.

Q. Did you make a memoranda statement of what any of the other conversations with him were?

A. I don't think that our records show that he ever made any kind of a statement to me.

Q. So that would be the only one that you know about?

A. I think so.

Q. In that conversation of December third, or at any other time

during the year 1913 did Mr. Badders say anything to you about having declared a dividend?

A. No sir.

Q. Of twenty five per cent or any other amount?

A. No sir.

Q. Say anything to you about himself, as president of the corporation, receiving fifteen per cent of all sales over fifty thousand dollars?

A. No sir.

466 Q. Did he say anything to you about the increase of his salary five thousand dollars per year to begin back at the beginning of his company?

A. No sir.

Q. Did you learn about any such things as that from any person?

A. Not until the trial.

Q. The bankruptcy trial?

A. Yes sir.

Q. Did he say anything in that conversation in reference to his receiving twenty five hundred dollars as a commission for selling ten thousand dollars' worth of the stock of the company to himself?

Mr. Harkless: I object on the ground it assumes the testimony shows that any such things were paid to Mr. Badders and there is no testimony whatever of any such character.

The Court: He may answer whether he said anything about it.

Mr. Harkless: Well, Your Honor, it would be assumed he had failed to speak about a thing the evidence fails to show ever existed.

The Court: I don't propose to get into any controversy with counsel about what this evidence shows; the court thinks it knows what it shows and I am not going to get into any debate about what it shows.

Mr. Harkless: I want to state this to the court; that there is not a particle of testimony here that anything ever was paid to Mr. Badders; and this question of the counsel asked him if he stated that these things had been paid to him, thereby assuming that they had been paid.

The Court: Answer.

Mr. Harkless: Except.

A. No.

Q. Was there anything said about there being dividends of twenty five per cent on the capital stock having been declared on two different occasions during 1913?

Mr. Harkless: Object to that for the same reason.

The Court: For the same reason the objection is overruled. Answer.

467 A. No sir.

Cross-examination.

Questions by Mr. Harkless:

Q. In the first place, you represent what company?

A. R. G. Dunn and Company, sir.

Q. Well, that is a sort of a self-constituted company, isn't it?

A. In what way?

Q. For the purpose of going around and trying to find out from people what their business is?

A. Yes sir.

Q. And you kind of have a reputation, as such, of making merchants make statements to you?

A. No, not to make them.

Q. You seem to be offended if they don't make them.

The Court: You may tell in a general way what this Commercial Agency is.

Mr. Harkless: Your Honor, I will ask this question in a moment.

The Court: I will tell you what you can and what you can't ask; let him state what that commercial agency is, and what the business is and why he goes to these people to inquire.

Mr. Harkless: I will ask him those question- when I get to them, if the court please.

Q. You- business is to go to merchants and ask them questions about what their private business is?

A. Yes sir.

Q. For the purpose of afterwards selling that information to creditors, isn't it?

A. Exactly.

Q. And you sell the information to creditors that you go around and find out concerning the private business of individuals in business in the community?

A. Yes sir.

Q. And you try to go to everybody in business and try to make them make a statement to you?

468 A. We do.

Q. Yes. Now there are a great many merchants in the country that decline to do that with anybody, isn't there?

A. Very few.

Q. And on those few, if they don't make a statement, then you undertake to report against them, if they don't make the statement, don't you?

A. No, never.

Q. Now you say that you went there on the third of December, 1913, did you?

A. Yes sir.

Q. And that Mr. Badders told you that he was going to close the store?

A. Yes sir.

Q. You didn't mean to tell the jury that he was going to close up business?

A. Temporarily close business.

Q. You mean to close it for the purpose of making an invoice before making the sale?

A. He told me that he was going to close the store in order to

paste up his windows and start a sale, he didn't mention invoice at all.

Q. You didn't mean to imply he was going to close his store permanently?

A. No.

Q. Now you say that when you went in there, did you tell him who you were?

A. Yes sir, he knew me.

Q. He knew you?

A. Yes.

Q. Now when you went in there you went there for the purpose of having him make a statement of his private business to you?

A. Yes sir.

Q. And he declined to do it?

A. Yes sir.

Q. However, afterwards in December, after he made his inventory he did send for you to come down there, didn't he?

A. No sir.

Q. I thought you said he called you up?

A. He called me up on December third, the only time he ever called me.

Q. The same day?

A. The same day after I was down there.

Q. After you went away?

A. He called me up on December third and what I gave you is the gist of what took place there.

Q. When was it you said he had made you these statements?

A. On December third, the same day I was there, he called me down and I took the other matter up at the same time.

Q. Well then after he had made this statement did you reduce it to writing?

A. Yes sir.

Q. Did you make a report to your company?

A. I did, dated December 3, 1913. By the way, it was a favorable report.

Q. How is that?

A. It was a favorable report, I didn't knock him because he didn't give me a statement.

Q. You made a very favorable report about it?

A. Yes sir.

Q. And in the report you made reported his transactions were in good faith and honesty?

A. So far as I knew.

Q. I say as far as you knew; that is as far as you know anything. Didn't you state in your report these verbal statements were accepted by you as made in good faith?

A. Yes sir.

Q. And didn't you state that you thought that they should be relied upon?

A. Yes; I couldn't question them at the time.

Q. No. Now didn't you state in that report that this twenty-five

thousand dollars was to pay up a portion of the capital stock, twenty five thousand dollar note?

470 Q. Was to help to pay up his indebtedness.

Q. Well didn't you state that it was a payment of a part of the capital stock?

A. Agreed. Yes sir. The notes represented the increase.

Q. Yes. Now didn't you further state that this note, or, first, you stated a while ago that he said the note was given by other parties?

A. As far as I can remember he said that.

Q. Other parties than whom?

A. Than himself.

Q. Did he say that?

A. He didn't say he gave the notes himself, he said other parties, as far as my knowledge goes.

Q. Well, other parties than the corporation?

A. Other parties than himself.

Q. Now let's wait a minute; did he say himself?

A. Yes sir.

Q. Now you are certain about that, now, are you?

A. Yes sir.

Q. You were getting a statement from the corporation?

A. Agreed. But the increase capital was not paid in by himself, it was paid in by notes from other parties.

Q. Well did he say that to you?

A. Yes sir.

Q. Now let's see if you said that in your report? (Mr. Harkless looking at some report.) Just saw that here a moment ago and I want to look over this again. Now didn't you state in that report that he stated the twenty five thousand extra capital had been paid in the shape of notes?

A. Agreed, that is what I tried to explain.

Q. That is what you said in your report?

A. Yes.

Q. Now you want to state that they were paid him by notes other than his own?

A. That is the statement he made to me as far as my knowledge goes.

471 Q. But you didn't put that in your report?

A. Possibly not.

Q. Wouldn't that be an important matter to put into the report?

A. We don't always remember everything a man tells us, it is possible I left something out.

Q. This report has been made over a year ago?

A. Yes sir.

Q. Have you seen this since you made it?

A. Sure.

Q. Now you say this added capital appears to have been inadequate to take care of their liabilities for although they do not appear to be doing an increasing business both their assets and liabilities have increased correspondingly. Did you state that?

A. I wish to state to the court right here that the paragraph he

is now introducing is nothing more or less than the opinion of myself.

Q. Where did you get that from?

A. It is an opinion of myself.

Q. Well you found it out from somewhere; you wouldn't make that statement without knowing something about it?

A. Naturally, I have been there for a couple of years and learned something of this concern.

Q. You wouldn't have made that statement in your report unless you had ascertained something about it, would you?

A. That is a summary of my knowledge of the question.

Q. No, no, listen; This added capital appears to have been inadequate to take care of their liabilities, for although they do not appear to have been doing an increasing business, both their assets and liabilities have increased correspondingly. Did you say that?

A. Mr. Robertson: Objected to as not cross examination. I want counsel to introduce his document if he is going to read from it; let's have it in testimony, the whole thing.

The Court: Go on.

472 Q. Now when you made that statement did you believe it to be true?

A. Yes sir.

Q. Did you found it upon any facts that you learned?

A. Well, upon my knowledge of the concern and what I gathered around town.

Q. Yes.

A. Yes.

Q. Then you now say and are willing now to say to the jury that was true?

A. At that time?

Q. At that time?

A. At that time, yes.

Q. And on the third of December, with your knowledge, living there in the city, and making this report to the public to be used by creditors, you stated that thing to be your opinion of it?

A. At that time, yes.

Q. Now you made another report after that, didn't you? On December 24th?

A. Yes sir.

Q. Have you testified about that?

Mr. Brady: Objected to as not cross examination.

The Court: He was not examined about that; go on and ask him any question about that.

Mr. Harkless: I propose to do so Your Honor.

The Court: Well go on.

Q. In the report of December 24th, this was made after somebody had brought an attachment suit, wasn't it? I will ask you if you stated in that report that he claims he will be able to dispose of all of his indebtedness with the proceeds of the sale and has plenty of cash capital to resume business?



A. Yes sir.

Q. You made that statement?

A. Yes sir.

Q. And that was on December 24th?

A. Yes sir.

473 Q. You believed that to be true?

A. No, I didn't believe it; will you please read the report right through?

Q. "Although there seems to be some dissatisfaction on the part of some of the creditors there appears to be no reason why they should not be paid promptly as they are reported to have taken in twenty five thousand dollars in their present sale. They were sued in the District Court by an eastern concern for an account of nine hundred and twenty dollars and their bank account was afterwards garnisheed and Mr. Badders claims this account is not yet due and on that account he does not see fit to make a settlement at this time. The sale which they have been conducting finished today and it is understood they will immediately resume business. In the course of conversation today Mr. Badders stated he had interested another party in the business, although he does not care to make public the party's name. Claims he will be able to dispose of all the indebtedness with the proceeds of the sale and has plenty of cash capital to resume business. Although there seems to be some dissatisfaction on the part of some of the creditors there appears to be no reason why they should not be paid promptly as they have reported to have taken in in the neighborhood of thirty thousand dollars in cash in the recent sale." That was your report then, wasn't it?

A. Yes.

Q. Not the statement that you get from your customers, and that you got from Mr. Badders, isn't the statement that goes to a creditor is it? It is sent in and reformed by the house?

A. It is written in Topeka and sent out from Topeka to New York, Chicago, Philadelphia—

Q. What you write is not sent to them?

A. Every piece of information written there is written by myself and sent direct to New York.

Q. When you get certain facts from the parties you go out and form a set of conclusions and send it in?

474 A. Naturally have to do it.

Q. Not his statements but some of your conclusions?

A. We have to do it, sure, sure.

Q. And you possess the ability to ruin your man by your statements?

A. Have never done so in all my experience.

Q. I didn't say you had, I say you can?

The Court: Let me understand this; There are subscribers to that agency, business merchants all over the country?

A. Subscribers all over the country.

Q. And when they want to inquire about the standing of any merchant they make inquiry through your agency?

A. Yes sir, and pay us for that information.

Q. And they pay you for the information and you obtain the information and send it to these houses, after you have obtained what you think is correct information?

A. We give the best we can.

Mr. Harkless:

Q. And then after you receive an inquiry, if you haven't got the information, then you send a fellow out to hunt it up?

A. What do you mean?

Q. Suppose they make an inquiry when you haven't got a report, then you go out and hunt the fellow up and get his statement and send it in for pay?

A. Yes sir.

The Court: Was this Badders Company a member of your agency?

A. No sir, it is only wholesalers.

Q. Only wholesalers?

A. Yes, and they get information of retailers.

(Witness excused.)

JOHN W. NEWELL, called as a witness on behalf of the plaintiff, having been first duly sworn, testifies, as follows:

Direct examination.

Questions by Mr. Brady:

Q. State your name?

475 A. John W. Newell.

Q. Where do you live?

A. Topeka, Kansas.

Q. What is your profession?

A. Attorney at law.

Q. And you are acquainted with George Badders.

A. I am.

Q. And how long have you known him?

A. Probably fifteen years.

Q. You have any occasion to call on him during the month of December, 1913?

A. I did.

Q. What was the occasion of your calling on him?

A. I received some claims in the office from creditors of the Badders Clothing Company.

Q. What time in the month, about, was it, the first time you received claims?

A. I don't recall and I have not refreshed my memory as to that; I should say probably from the middle to the latter part.

Q. Of the month?

A. I was out of the city the fore part of the month.

Q. And upon the occasion of your going to his place of business to see about the payment of these claims, did you have a conversation with him?

A. I did.

Q. I wish you would state to the jury what conversation you had with him, the substance of it, if you can't remember the exact words?

A. Well, in substance, I asked him for payment of these claims and was deferred until some future time; I interviewed him.

Q. What did he say in reference to waiting?

A. Well it was very indefinite, he would usually, or did several times, simply say, state some certain date at which time he hoped to be able to give me more definite information.

Q. What did he say in reference to paying the bill then if anything?

A. Well he always said he couldn't pay it then.

476 Q. How late in the month of December did you have such a conversation with him as that?

A. Well, late in December, in fact I think also in January.

Q. Did you know at the time you was talking with him how much cash he had taken in from the sale he was holding?

A. No.

Q. And how many days had the sale been running at the time he stated to you he could not pay your bill?

Mr. Hite: If Your Honor please, the witness has not so testified.

The Court: Do you know what time the sale began?

A. Well I knew at the time, I don't recall now.

Q. What time did you have a conversation with him with reference to the time when the sale began?

A. Well, I had several conversations after the sale had begun.

Mr. Brady:

Q. Did you have some of them after Christmas Day?

A. I think so.

Q. Did he in a conversation after Christmas Day state he would not pay the bill then and have to be some time in the future?

A. Yes, he didn't say that he didn't have the money; he simply said he couldn't pay the bill at that time.

Q. Did he say he did have the money?

The Court: State what conversation you had with him about it? And who did you represent, what creditors?

A. I don't recall, I probably had, all told, eight or ten claims in the office. They weren't the largest claims, ran from a hundred dollars each probably; but as I stated, the information I got was very indefinite; he would usually say "That I can't do anything or can't say anything further about this now" but set some date, usually about a week off, may be less and may be more when he hoped to be able to give me more information; I was trying to get information that I could say to my clients when I could expect payment.

477 Mr. Hite: We ask, Your Honor, that the witness confine himself to the conversations between him and the defendant and not as to what he was trying to do.

The Court: You went there and asked him for payment, did you?  
A. Yes sir.

Q. And you didn't get your bills paid?

A. No sir.

Mr. Brady:

Q. Mr. Newell, were any of those bills ever paid to you by him?

A. No.

Q. None of them. Do you know what became of the bills?

A. I still have them in my office, I have filed proofs of them.

Mr. Hite: Objected to as incompetent, irrelevant and immaterial.

Mr. Brady:

Q. Where did you file proofs of those claims?

Mr. Hite: I ask for a ruling.

The Court: He has said he went there with these bills, several bills, and asked for payment and payment was refused, and that he never collected the bills afterwards from him, and he was there as late as January 1914.

Mr. Hite: If your Honor please, the defendant objects to the statement of the court as to what the witness has testified for the reason counsel most respectfully submits the witness has not yet testified that payment was refused; he didn't say he wouldn't pay them.

The Court: Did you ask for payment?

A. I asked for it.

Q. Did you get it?

A. No sir.

Q. What reason if any did he give you?

A. He would usually say "I can't do anything at this time, I can't tell you anything until I think probably next Wednesday, I may be able to give you more definite information."

Mr. Brady:

Q. Now what did you do with those claims; where did you file them?

Mr. Hite: Object to that.

478 The Court: I don't see why it becomes important what he did with them. The question is whether he had the claims, whether he went there to collect and got his money.

Mr. Brady:

Q. Do you know whether they have ever been paid or not?

Mr. Hite: Objected to as incompetent, irrelevant and immaterial.

The Court: He has said he never received anything himself. Whether paid to anybody else he has not said.

Mr. Brady: He may know whether they have been paid to any one else.

Mr. Hite: Objected — as immaterial.

## Cross-examination.

## Questions by Mr. Hite:

Q. Mr. Newell was there any time during those conversation- that you had with Mr. Badders with reference to these claims that he declined to pay them in so many words, say he wouldn't pay them?

A. He did not say he would not pay them.

Q. Did he at any time tell you that he could not pay them, in the sense that he didn't have the money?

A. I don't think he said he didn't have the money although I think he said "I can't pay those today or can't do anything with them today."

Q. From what was said there did you understand he was declining to pay at that time rather than declining to pay altogether?

A. Oh he never disputed the bill.

Q. Mr. Newell did not Mr. Badders say to you on one or more occasions in the course of these conversations that he was trying to get a statement of his condition and that he would report it to you when he did, make it, or something in substance to that effect?

A. I don't recall that exactly.

Q. Did he not say in substance that he was trying to find out where he stood with reference to these bills and that he would make some payment to all of his creditors, anything of that character?

479 A. I don't think he said anything about the other creditors; he simply said that by a certain time, stating it, that I think I will be able to give you more definite information.

Q. Information about what did you understand Mr. Newell?

A. Well about when he would be able or when he would take care of these bills.

Q. And he was telling you in substance to that effect as late as some time in January, as I understand you?

A. I think so.

Q. Mr. Newell, did you know of the circumstances of the Badders Clothing Company being enjoined from making any payments.

Mr. Brady: Objected to as not cross examination, Your Honor.  
The Court: Answer.

A. I don't think I knew of that.

Q. Do you recall nothing of that circumstance?

A. I may have known it later but I didn't then.

Q. Mr. Newell one of the claims that you had was for some furniture and fixtures was it not?

A. Well I had one such claim yes.

Q. Now that matter of the furniture and fixtures was not an outright sale to the Badders Clothing Company was it?

A. No that claim came in just very late.

Q. Very late?

A. Yes.

Q. You had some talk with Mr. Badders with reference to that claim, also, did you not?

A. Yes sir.

Q. There was some question of dispute between you as to the furniture and fixtures, was there not?

A. No.

Q. As to the furniture and fixtures there was not an outright sale, it was a conditional sale, was it not?

A. It was.

Q. And the title to the property you claimed never passed at all is that a fact?

A. That is a fact.

480 Q. And that was one of the claims you afterwards had during the course of these negotiations with Mr. Badders, is that right?

A. Yes sir.

Q. How many times were you up there Mr. Newell?

A. Oh I presume half a dozen times.

Q. Did you see any other attorneys there whom you know as being in the collection business?

A. I don't think I ever saw any in the store at the same time I was there.

Q. You don't recall that circumstance at all. Do you know of the circumstance of a suit being filed against the Badders Clothing Company some time in December?

A. Yes I knew there were suits filed.

Q. You knew of some suits that had been filed; Mr. Badders make any comments to you at the time you were having these conversations with reference to those suits?

A. I think one of them he stated to me that the claim was not yet due.

Q. Although it had been sued?

A. Yes.

Q. That is one of the claims that you speak of as being in suit? Is that right Mr. Newell?

A. Yes sir.

Q. Was that the claim of Rosenwald and Weil?

A. I don't remember.

Q. You don't know the name; was there anything said in these conversations and particularly with reference to these suits, that in one of them the Clothing Company's account in the bank had been attached or garnisheed?

A. I don't recall whether Mr. Badders ever mentioned that to me or not. I probably heard it.

Q. You knew of that circumstance, did you?

A. I think so yes. I don't know just when I heard it.

(Witness excused.)

481 O. H. WHITE, called as a witness on behalf of the plaintiff, having been first duly sworn, testifies, as follows:

Direct examination.

Questions by Mr. Robertson:

Q. What is your name, please?

A. O. H. White.

Q. And where do you live Mr. White?

A. Topeka.

Q. What is your business?

A. Topeka Transfer Company.

Q. You own the Topeka Transfer Company?

A. Yes.

Q. Are you acquainted with the defendant George S. Badders?

A. Yes sir.

Q. Do you remember of having a telephone conversation with him Christmas night 1913?

A. Yes sir.

Q. Tell the jury about it, how it happened, when it was?

A. About eleven thirty Christmas evening I was called to the telephone.

Q. Christmas Eve or Christmas night?

A. Christmas night, twenty fifth of December, 1913, about eleven o'clock or eleven thirty, I was called to the phone and I answered the phone and some one on the phone says, "I want a wagon and two men at my store."

Q. Did you recognize who it was?

A. Yes sir I recognized who it was and he told me.

Q. Who was it?

A. Mr. Badders, George S. Badders. And I asked him what he wanted and he told me he would like to have a wagon and two men at the back door of their store as soon as they could.

Q. What did you say?

A. I said "tonight"? And he said "Yes, tonight." I says, "Can't put it off till morning. You can't put it off till morning"; and I asked him what he wanted to do and he told me.

Q. What did he say?

482 A. Said he wanted me to take a load of goods to north Topeka; and I asked him who for, and he gave me the name of the man, being Fred Voiland; and I says, "Is Mr. Voiland there?" And he says, "Yes". I says, "I don't know George whether I can get my men or not, I will make an effort and if I can raise any of the men I will call you in a few minutes." And I called my man at his house, and he answered immediately, and I told him what I wanted and I directed him then to go——

Mr. Hite: Not what you said to your man Mr. White, please. We object to that.

The Court: Objection sustained. Did you have any further conversation with Mr. Badders?

A. No sir. Why yes, I called Mr. Badders and told him the men were coming.

Mr. Robertson:

Q. What kind of a night was that?

A. Pretty cold, quite a cold night.

Q. Were you in the habit of doing hauling for the Badders Clothing Company?

A. Yes sir, had been for several years.

Q. Who paid for this Voiland hauling?

A. Mr. Voiland.

Q. Sure about that?

A. I have the receipt in my pocket.

Q. Mr. Voiland paid for it?

A. Yes sir.

Q. Now do you remember of other occasions where you people hauled for Badders or from Badders to Voiland after that?

A. I think they took one other box.

Q. When was that?

Mr. Hite: Do you know this of your own knowledge?

A. I know it was done but I can't tell just when.

Q. State if you know where the box was obtained?

A. I don't know certainly.

Q. Do you remember whether the box was over there at your storage house or not?

A. I do not.

483 Q. What are the storage facilities of Topeka, if you know?

A. We have three storage houses.

Q. Any trouble for a man to get ample storage room for boxes of merchandise if he wanted it?

A. Never has been.

Q. No trouble at all?

A. No sir.

(Witness excused.)

(5:30 P. M. recess until seven o'clock P. M.)

The Court: Get your dinners or suppers or whatever you call them out here in your country and be back in your seats at seven, and see what we can find out to-night. Recess of court until seven o'clock.

(Seven o'clock P. M., Monday, January 25, 1915.)

O. H. WHITE (recalled).

Mr. Robertson: Your Honor, the Government desires to recall Mr. White to introduce two papers we did not know he had when on the witness stand.

The Court: Want to ask him a question?

Mr. Robertson: Yes.

Q. Mr. White, have you a couple of bills of lading with you?

A. They are expense bills, yes sir.

Q. Marked 42 and 43. I call your attention to papers marked Exhibits No. 42 and 43 and ask you to state whether those are the originals or not, if you know?



A. The original bills of lading, yes. No. 5405, 6002 one January 28th and the other January 29, 1914.

Q. State whether you delivered the articles covered by those bills to Mr. Badders of the Badders Clothing Company.

Mr. Hite: Objected to as incompetent, irrelevant and immaterial; it is a mere conclusion of the witness, and the papers presented to the witness are not offered in evidence.

Question read.

The Court: Answer.

Mr. Hite: Except.

A. Yes sir.

484 Q. To which one did you deliver them?

A. I don't understand the question.

Q. I meant to ask you were these delivered to the Badders Clothing Company?

A. Yes sir.

Mr. Robertson: We offer the bills of lading marked Exhibits No. 42 and 43 in evidence.

Mr. Hite: We object to these as incompetent and immaterial, it is not shown that the defendant ever saw either one of them.

The Court: To whom did you deliver them?

A. Delivered them to the store of the Badders Clothing Company.

Q. You know to whom they were delivered?

A. No, I do not; you will have a witness on the stand who will tell you who received them.

Q. Where did you get them?

A. They came from the Santa Fe railroad company, Santa Fe bills, one calls for eight boxes the other for six boxes.

Mr. Hite: We object to what the witness says is in them.

The Court: And you delivered the goods mentioned in these bills to the Badders Company?

A. To the Badders Clothing Company, yes sir.

The Court: You propose to follow it with showing to whom they were delivered.

Mr. Robertson:

Q. Did you have a conversation with Mr. Badders about this Exhibit No. 42 and 43 and the articles therein referred to?

A. Yes sir.

Q. When was that in relation to the delivery of the articles?

A. On the date of the delivery, yes sir.

Q. Who if any one paid you for this work?

A. Mr. Badders himself.

Q. State what conversation you had with him about it?

A. Well Mr. Badders called me and asked me to send up the collector to collect for these two bills, that the receiver would take possession that evening and if we wanted our money have to get right up and get it, as I remember it, and I sent a man.

Q. Had the boxes been delivered?

485 A. Yes sir.

Mr. Robertson: We renew our offer of this in evidence, Exhibits No. 42 and 43.

Mr. Hite: We still do not see how these have anything to do with the matter, it is not in evidence here the defendant ever saw these two pieces of paper.

The Court: Did he pay you in person for these bills?

A. Yes sir, for the freight and drayage.

The Court: Read the bills.

Mr. Hite: Except.

Mr. Robertson: Reading Exhibits Nos. 42 and 43.

(Copies of exhibits Nos. 42 and 43 are attached hereto and made a part hereof.)

Q. Mr. White, had you personally ever seen those boxes before?

A. I don't think I can answer that question.

Q. I ask you whether you personally ever before saw these boxes referred to in Exhibits Nos. 42 and 43?

A. I don't know as I ever saw them before that, no sir.

Q. There are other of your men here, of course?

A. Yes sir.

#### Cross-examination.

#### Questions by Mr. Hite:

Q. Mr. White, did you personally deliver these two pieces of paper to Mr. Badders?

A. No sir.

Q. And when you say that he paid you you mean he paid some employe of yours?

A. He paid Mr. Axtell my partner.

Q. You personally had no transaction with Mr. Badders in which you got any money from *in* in regard to these bills, did you?

A. Let me see that bill a minute; I don't think I signed that, that is Mr. Axtell's writing; I sent him up there to do it.

Q. All you know about that is what you learned from your partner, or the face of the bills, isn't it?

A. The money came back to the office.

Q. You don't know but the cashier of the Badders Com-  
486 pany paid these?

A. No Mr. Badders himself paid that.

Q. How do you know that?

A. Mr. Axtell said so.

Q. That is the only way you know it?

A. I don't very often go out to collect bills.

A. No sir, I thought that. Mr. White these cases you have described as being sent to the Badders Clothing Company were returned to your warehouse were they not?

A. The empty cases were.

Q. I mean the empty cases?

A. Yes sir.

Q. How did that happen?

Mr. Robertson: Objected to as not cross examination.

The Court: Answer. How did you get the empty boxes back?

A. Well I don't just know how it was, they called up and somebody said the boxes were there and could have them if come and get them, and sent and got them, and afterwards when Mr. Clark got possession they came down to see how they were marked and asked us to hold them, and we still have them in our possession.

Q. Did Mr. Badders call up your place and ask you to send and get these cases?

A. I don't remember whether it was Mr. Badders or not.

Q. The same day those cases were delivered some one called your place up and asked you to send up and get the empty cases, did they not?

A. Yes sir.

Q. And *that* same persons asked you to carefully preserve them did they not?

A. I don't think they did at that time.

Q. You don't recall that?

A. No.

Q. But some one did call up and ask you to send down and take these empty cases back?

A. Yes, to hold them.

487 Q. Had you ever done that before in hauling for the Badders Clothing Company?

A. Not to my knowledge.

Q. Mr. White, to refresh your recollection I will ask you if you didn't testify on another occasion in April or May of this past year at a hearing before Judge Garver in the city court at Topeka, to the effect that Mr. Badders called you up and asked you to send and get those cases and to take good care of them. Did you or did you not?

A. I don't remember that I gave that testimony, if I did I would sure said it over; I don't remember who did call.

Q. If you gave that testimony at that time it was a fact?

A. If I said so then I think it was, yes sir.

Q. And you say now you have no recollection of having so testified?

A. I don't remember that I said that.

Q. I will ask you Mr. White if in answer to questions asked by Mr. D. R. Hite, of counsel for the defendant in this case, upon this point you did not there testify that after these cases were delivered at the Badders Clothing Company's store in Topeka Mr. Badders called you up and asked you to come and get the empty cases and be sure and keep them?

A. You have a record stating so?

Q. I am asking you, Mr. White?

A. I say I don't remember, if you have it down in black and white I will say yes.

Q. It is not here at hand Mr. White, I am asking you because my recollection would not cut any figure.

A. So many things happen it is pretty hard to remember all these things.

Q. I am not questioning your veracity, simply trying to refresh your recollection; I understand you now to say you don't remember who it was?

A. No.

Q. And I ask you if you remember testifying in the way I have indicated?

488 A. I don't remember the question came up Mr. Hite.

Q. I understand you don't remember about it. About what time during the day Mr. White did you receive this telephone message to come up and get the empty cases?

A. I don't think I can tell you that; I think it was in the afternoon, quite sure of that, I don't know what hour.

Q. Do you know about what time of day these cases were delivered?

A. No I don't.

Mr. Hite: The defendant moves to strike out the exhibits numbers 42 and 43 for the reason that there is no evidence that the defendant ever saw the exhibits in question.

The Court: Something has been said here, and was said here in the opening of this case, by counsel on either side, that certain boxes were returned with goods in them from Kansas City to Topeka; and I want to know of the District Attorney whether he expects to prove that these boxes that came back from Kansas City were the boxes sent elsewhere?

Mr. Robertson: I expect to show that your Honor.

The Court: Overruled.

Mr. Hite: Except. I am not objecting to the testimony of the return of the cases. The point of my objection is to these two pieces of paper that is all.

The Court: Overruled.

Mr. Hite: Except.

The Court: Let it be followed up by connecting it with the proof. Both made statements here in explanation of the statement the District Attorney made at the opening as to boxes sent out of that store and returned to the store. Both of those statements were made. Go on with your next witness.

(Witness excused.)

W. B. KIRKPATRICK, called as a witness on behalf of the plaintiff, having been first duly sworn, testifies, as follows:

489 Direct examination.

Questions by Mr. Brady:

Q. What is your name?

A. W. B. Kirkpatrick.

Q. Do you know Mr. George S. Badders?

A. Yes sir.

Q. And do you know who had charge of the building in which his store, the Badders Company store was in 1913?

A. It belongs to the Knights and Ladies of Security; I am the president of that society and have charge of the building.

Q. And you had the building rented to Mr. Badders? For how much per month?

A. Five hundred dollars.

Q. And do you know whether or not he paid the rent for the month of November, 1913, the Badders Clothing Company?

A. No sir.

The Court: He asked you, do you know, what is your answer?

A. Yes sir I know.

Mr. Brady:

Q. Did they pay it; did the Badders Clothing Company pay the rent that month?

A. No sir.

Q. And for the month of December, did they?

A. No sir.

Q. And for the month of January, 1914?

A. No sir.

Q. Month of October 1913?

A. No sir.

Q. I hand you exhibit No. 44 and ask you to state if you recognize that paper?

A. I do.

Q. Is that a paper which you presented to Mr. Badders George S. Badders on account of his non-payment of the rent?

A. I went into the store——

Mr. Harkless: He has asked you what that is first.

A. I presented — to the desk in the store room, Mr. Badders was not in.

490 Mr. Brady: We offer in evidence Exhibit No. 44.  
(A copy of Ex. 44 is attached hereto and made a part hereof.)

The Court: Where did you present it?

A. At the clerk's desk, in the store room.

Q. To whom, Mrs. Burdick?

A. Mrs. Burdick.

Q. Mrs. Ira Burdick. What is it.

Mr. Brady: It is a notice on the defendant and the Badders Clothing Company.

Mr. Harkless: I object to the statement of what it is.  
(Paper handed to the court.)

The Court: Objection to that is sustained.

Cross-examination.

Questions by Mr. Hite:

Q. Mr. Kirkpatrick, do you recall certain negotiations between you or the Knights and Ladies of Security, and the owner of that building there, and Mr. Badders on behalf of the Badders Clothing Company, looking to the subletting of a part of that store building?

Mr. Brady: Objected to as not cross examination.

The Court: Answer. As I understand it you introduce this proof for the purpose of showing that certain indebtedness existed in January 1914, and you introduce it for the purpose of showing that indebtedness had not been paid, and that therefore it was a liability at that particular time. Now on the other side they are asking whether there were any negotiations about something else touching the same building. Answer.

A. Yes sir,

Mr. Hite:

Q. State Mr. Kirkpatrick if those negotiations did not contemplate the renting of a part of that store building to the United Cigar Stores Company?

Mr. Brady: Objected to as not proper cross examination. Counsel is not seeking what you have in mind at all by his question.

The Court: Probably you don't know what counsel is seeking. I am only passing upon the question as to whether this is legal testimony. If there is anything to be shown here by this cross examination that there was no part of that indebtedness due, he can show it; or if any arrangement made by which anybody else was to pay that indebtedness, that may be shown.

Mr. Hite: You may state Mr. Kirkpatrick.

A. Your question?

Q. Question read.

A. Yes sir.

Q. Did that not also contemplate a renewal of the then existing lease after this subletting matter was arranged?

A. Well the subletting matter had not been completed, the negotiations were pending.

Q. You took some part in those negotiations yourself, did you not Mr. Kirkpatrick.

A. I did.

Q. And in that connection saw a representative of the United Cigar Stores Company, did you not?

A. I did.

Redirect examination.

Questions by Mr. Brady:

Q. When was that?

A. Late in the month of December.

Q. You remember about the date?

A. In the latter part I would say, some time between the 20th and the last of the month of December 1913.

The Court: Did those negotiations have anything to do with the rent for October, November, December of the building?

A. No sir.

Q. Separate and independent matter.

A. Yes sir.

The Court: Stand aside.

Mr. Hite: Your Honor, I can't let that rest at that.

Recross-examination.

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Questions by Mr. Hite:

Q. I will ask you Mr. Kirkpatrick if during the course of those negotiations Mr. Badders did not say to the representative of the Knights and Ladies of Security that this rent matter would be taken care of as soon as the question of the renewal of the lease at an advanced rate was disposed of; did he say anything of that kind?

A. He promised that the rent would be taken care of but not in connection with the matter of the negotiating the lease for the division of the room.

Q. But the two things were on foot at the same time, were they not?

Mr. Brady: Object to that as asking for a conclusion of the witness.

The Court: What do you mean by two things on foot, negotiations and payment of the rent?

Mr. Hite: Yes.

The Court: State if anything said about anybody paying the rent of this building for the months of October, November and December other than the Badders Clothing Company?

A. Prior to the commencement of the sale in December Mr. Badders promised to pay the rent beyond a question.

Mr. Hite:

Q. Mr. Kirkpatrick I now hand you a paper and ask you if that is your signature?

A. Yes sir.

Q. After reading that paper do you still say that there was not any connection between the negotiations for the new lease and the payment of the back rent?

A. Well, in every conversation we had with Mr. Badders he promised to pay the rent.

Q. Please answer the question Mr. Kirkpatrick; after reading that letter what do you now say as to the connection between the matter of the then accruing rent, or accrued rent and negotiations for a renewal of the lease and the subletting of the building?

A. I see this is dated January 21st?

493 The Court: If there is anything in that paper read it.

Mr. Hite: We offer the paper which has been marked Exhibit No. 45 in evidence.

Mr. Robertson: We have no objection.

Mr. Hite: Reading Exhibit No. 45 to the jury.

(A copy of Exhibit No. 45 is attached hereto and made a part hereof.)

Q. Mr. Kirkpatrick, do you recall the circumstances of a petition in bankruptcy against the Badders Clothing Company being filed on the day of the date of this letter?

A. Well I couldn't recall the dates, Mr. Hite.

Q. It was right at that time, was it not Mr. Kirkpatrick?

A. What is the date of the other paper?

The Court: If you know the date, state it, and if you don't, state it.

A. I do not.

(Witness excused.)

GEORGE THOMPSON, called as a witness on behalf of the plaintiff, having been first duly sworn, testifies, as follows:

Direct examination.

Questions by Mr. Brady:

Q. What is your name?

A. George Thompson.

Q. Where do you live?

A. Topeka.

Q. What is your business?

A. Porter at Mills Dry Goods Store.

Q. Porter at Mills Dry Goods Store?

A. Yes sir.

Q. And do you know George S. Badders, the defendant.

A. I worked for him.

Q. How long did you work in the store there known as Badders' store?

A. Well I worked there about six years, with Robinson and Marshall.

494 Q. Work on down to the time the store closed?

A. Yes sir.

Q. And were you working there for Mr. Badders during the year 1913?

A. Yes sir.



Q. How old are you?

A. Twenty-nine.

Q. Married man?

A. Yes sir.

Q. And were you employed in the store during the months of June, July, August and on down to December, 1913?

A. Yes sir.

Q. What were your duties there?

A. I done the porter work and took on the freight.

Q. Handling the incoming freight?

A. Yes sir.

Q. Unpacking goods?

A. Unpacking.

Q. And do you remember of the amount of goods that was received in the month of November, 1913, as compared with the months prior to that?

A. There was quite a bit come in that month?

Q. The unpacking of goods was much heavier?

A. Seemed to me pretty heavy.

Q. And what about the month of December, 1913?

A. Quite a bit come in that month.

Q. More that month than the month of November?

A. Well I don't know, I couldn't say, they was both pretty heavy; got heavy along about the middle of November, got pretty heavy.

Q. And do you remember in the month of December, 1913, of packing up goods that were in the store?

A. Yes sir, some time in December I packed up some stuff.

Q. Was that goods such as suits and men's clothing?

A. Yes sir; suits and overcoats.

Q. At whose direction did you pack those goods?

A. Mr. George S. Badders.

495 Q. And did you know what the brands were that were on the clothing what company or factory had branded them?

A. No sir I didn't pay any attention to what the brand was.

Q. What did Mr. Badders say to you about packing up these goods?

A. Told me to pack them.

Q. About how many overcoats were there?

A. I don't know just how many.

Q. Have an idea?

A. I haven't the slightest idea.

Q. Lots of them?

A. Quite a few.

Q. Do you know how many suits there were?

A. I don't know.

Q. Were there a large number?

A. Quite a few.

Q. Know how many cases or boxes of goods you packed there at his direction?

A. I don't remember.

Q. Who helped you do that packing?

A. I didn't keep any track of them.

Q. Who helped you do the packing?

A. What I done was done alone.

Q. And do you remember how many boxes there were?

A. I don't remember.

Q. Or how large the boxes?

A. Some pretty good size, varied in size.

Q. What was there in the boxes you packed besides over coats and men's suits?

A. That is all I packed overcoats and men's suits.

Q. You remember anything about any shirts?

A. I don't remember packing any shirts at all.

Q. Remember any suit cases or grips?

A. Don't remember packing any.

Q. Well after those goods were packed do you know what became of them?

A. I don't know, I left them sitting there because it was  
496 about my supper time and I went to supper about five thirty that evening and I left them setting there.

Q. And did you come back to the store that night?

A. I did.

Q. And when you got back to the store what time was it?

A. It was about six thirty.

Q. And were the goods there then?

A. I didn't see them; wasn't there where I left them at.

Q. As far as you could see they weren't there?

A. No sir, I don't know whether in the building, not right there where I left them.

Q. Do you know what time in the month that was?

A. It was some time in December I think, it was close to Christmas.

Q. Was it during the time the sale was on?

A. Yes sir, they was pretty busy at that time.

Q. Now did you ever see those boxes again?

A. Well I wouldn't say that I saw them again, some that resembled those.

Q. Did you see those goods again?

A. Not as I know of.

Q. Do you remember of any boxes of goods similar to those coming back to the store after Christmas?

A. Kind of remember those, I won't say for sure they was because there wasn't any mark on them I put on them to indicate anything.

Q. You didn't mark them?

A. No I didn't mark them.

Q. Do you know how many cases come back into the store after Christmas?

A. No I didn't keep track.

Q. You remember the day the receiver Mr. Clark took charge?

Q. Yes sir.

Q. Was that the day they came back?

A. Yes sir.

Q. And you don't remember the number of boxes?

A. I don't remember the number of boxes.

497 Q. Do you know who unpacked those boxes?

A. I for one helped unpack them.

Q. Who else helped?

A. I don't know, the boys around the store there, I don't know which ones, some was doing one thing and some another.

Q. Working in a hurry or working slowly?

A. Working pretty fast.

Q. Do you know at whose direction they were working?

A. I was working under Mr. Badders' direction.

Q. He say anything about hurrying up and getting unpacked?

A. Yes, he was in kind of a hurry about it.

Q. Said what?

A. He was in kind of a hurry about it.

Q. What if anything did he say was the reason for being in a hurry?

A. He didn't say anything at all, that was all he said.

Q. Just describe to the jury how the clerks worked there when in a hurry?

A. Worked pretty swift.

Q. How many of them were there?

A. I don't know just how many.

Q. What did you do with the goods when you unpacked them?

A. Took some on the main floor and some in the south basement and some in the north basement.

Q. Scattered them out?

A. Yes, just where we could find room.

Q. Now after you got through with the distribution of these goods to the various places in the store did Mr. Badders say anything to you and the other boys there about the matter?

A. He says if any one wants to know anything just tell them that we worked for him before this litigation and expect to work for him afterwards.

Q. What did he refer to, if any one wants to know anything about this?

Mr. Hite: Object to that Your Honor.

The Court: Sustained.

498 Question withdrawn.

The Court: Did he say anything about why this was done?

A. No sir, he didn't say.

Mr. Brady:

Q. Was that all you now remember him saying?

A. That is all I now remember him saying.

Q. Did he say anything about the receiver?

A. I don't remember whether he said anything about the receiver or not, that is all I can remember of him saying.

Q. Who else was there besides you when he said if any one wanted to know anything about this, to tell them you worked for Mr. Badders before this litigation——

A. I don't know just which of the boys was there, all scattered around.

Q. Several of them?

A. Quite a few of us, some in one place and some another; I don't know which ones was there.

Q. Was he addressing you or all of them when he made that statement?

A. He was addressing the bunch.

Q. And that was just as you finished the work?

A. Yes.

Q. How long after you finished that work before the receiver walked in?

A. The receiver walked in in the evening I think, I don't know what time it was exactly, along in the evening between five and six.

Q. Now during the month of December did you carry any books or papers or documents out of that store?

A. I carried some packages up to Mulvane's office.

Q. And how many packages did you carry?

A. I made two trips that I remember of.

Q. And what was the character of those books or paper, as far as you could see, what you did see?

Mr. Hite: Object to this Your Honor as incompetent, irrelevant and immaterial; don't see what bearing it could have upon this.

The Court: Did you take any books or papers out of the 499 office up there?

A. Took some stuff that was wrapped up through Mr. Badders' orders.

Q. Where were the things he ordered you to take?

Mr. Harkless: Object the question by the counsel and also on behalf of Your Honor, wholly immaterial.

The Court: What time did you take these packages out of the store?

The Court: I rule the question I am asking is perfectly legitimate. I will pass upon the other question when I come to it.

Mr. Harkless: Except.

The Court: I may say to counsel if we can get along with this matter and get at what ought to be gotten, the absolute truth of it, probably will help us along, but we will never make any headway with this sort of business, if we are constantly interrupted upon immaterial matters.

The Court: Now you carried some papers; when did you take them out of there?

A. One morning before Christmas.

Q. Where did you take them to?

A. Took them to Mulvane's office.

Q. Who is he?

A. A lawyer.

Q. Who told you to take them there?

A. Mr. George S. Badders.

The Court: Now what else is it you want?

Mr. Brady:

Q. Whereabouts was George Badders when he told you to take those papers?

Mr. Hite: Objected to as wholly immaterial and incompetent.

The Court: Overruled.

Mr. Hite: Except.

Q. Where was George Badders when he told you to take those papers?

A. He was up in the office.

Q. In the office of the Badders Clothing Company?

500 A. In the office of the Badders Clothing Company.

Q. Did you see where the papers and packages were lying when he told you to take them?

A. He showed me which ones to take.

Q. Where were they lying?

A. On the desk.

Q. Whose desk?

A. The cashier's desk.

Q. And when was that in reference to Christmas day? How long was it before Christmas?

A. I don't remember just when it was; it was during the busiest part of the sale.

Q. Was it before or after Christmas?

A. Before Christmas.

Q. About how long, your best judgment?

A. Well my best judgment is I should say about a week before Christmas.

Q. Was it any more than a week?

The Court: Oh don't inquire about all these things, more than a week or any other time.

Mr. Brady:

Q. Who else's office besides Mr. Mulvane's office was that?

A. I don't know, I just looked for Mulvane's office.

Q. Do you know Mr. Gault?

A. I don't know whether Mulvane and Gault, I don't know whether Gault's office is in there or not he told me to take them to Mulvane's office.

Q. Do you know Mr. D. R. Hite?

A. Yes sir.

Q. And his office was in the same office rooms you took those papers?

A. I don't know whether it was or not.

Q. You don't know whether it was or not?

A. No sir.

Q. Have you since learned where his office is?

A. I have.

Q. And is that the place where his office is?

501 A. Well it is next to that I don't know whether his office goes into that or not, leads into that office or not.

Q. Is that Mulvane & Gault's law office, the one that you went to?

A. It is Mulvane's, don't know whether Gault is in there or not; he told me to take it to Mulvane's office.

Q. I wish you would tell the jury where about that law office was you took those papers to?

A. It is in the Mulvane Building, I forget just what floor it is on, in the Mulvane Bldg. on the corner of Sixth and the Avenue.

Q. When you carried those books and papers how many loads did you carry?

A. I made two trips.

Q. Were they heavy loads of books and papers or not?

A. Pretty heavy, yes sir.

Q. Do you know what Mr. Mulvane's first name is, the office where you took those papers?

A. I don't know.

Q. Is it David?

The Court: He says he don't know; how material does it become whether David or Goliath.

Mr. Brady: For the purpose of showing it was David's office and not Goliath's office the papers were taken to; there is more than one Mulvane but Mr. Hite is with the one we are talking about.

Mr. Harkless: I except to that statement of counsel.

Mr. Brady: I withdraw the statement.

Q. Did you see any of the papers or were they all wrapped up or part wrapped up and others unwrapped?

A. One package wrapped, the other unwrapped.

Q. Now I wish you would describe to the jury the unwrapped package?

A. The one that was unwrapped they were, I don't know whether you would call them books or not; seemed to be a bill file about that thick and about that square, a couple of them, pretty heavy.

Q. How were the leaves of the file fastened together?

502 A. Were fastened through a rod that come up on each side of it, from one side to the other, stuck up about that far from the book.

Mr. Brady: We will have some of the sheets here in a minute like it. You can proceed with the cross examination if you please.

Mr. Harkless: If the Court please, defendant moves now to strike out all the testimony of the witness to the effect that he carried some papers from the store to somebody's law office as wholly incompetent, and immaterial and certainly when there is no testimony as to what character or kind of papers they were or what force or effect they can have in this case, it is unfair and unreasonable to permit any such testimony to go to the jury with the idea of having it inferred there is something wrong about carrying some papers, and

we insist that it should be sustained unless the counsel states now what materiality this has to the case.

The Court: In cases of this character, as lawyers know, made up, in many instances, of circumstances, and this circumstance of the removal of certain papers, after what has transpired here in the court room in reference to papers, may go, in a measure, to explain where certain of the papers were carried. Objection overruled.

Mr. Harkless: If the Court please, I would like to except to the Court's remarks, and to say to the court, how does the question of what has become of any papers become a question for the jury.

The Court: I don't care to hear any more argument. I have ruled upon the question, and when the court rules upon the question you will submit to it; you have a right to except to my ruling, and a right to have that corrected, but I will not sit here and permit the ruling I make to be condemned after I make it unless in an exception.

Mr. Harkless: We have excepted.

The Court: I have allowed your exception; I will not permit it in the court.

503 Mr. Brady:

Q. Mr. Thompson were the sheets of paper fastened by the fasteners of the size and similarity of the sheet you hold in your hand as Exhibit No. 46?

The Court: I do not think that is competent; you cannot prove a paper by a comparison of another paper.

Mr. Harkless: If the court please, with all due regard to the court, I do not suppose, Your Honor, that these gentlemen, in the light of the question they have just asked now—unless they expect to show what the character of these papers are—if they may state that so we may know, it will shorten this cross examination—as to whether they expect to show what those papers were.

The Court: The testimony so far as in has been admitted, and as to what may be stated by other people, has nothing to do with what I have already done.

Cross-examination.

Questions by Mr. Hite:

Q. Mr. Thompson do you recall what time of day it was when you assisted in the packing of some goods in the basement of the Clothing Company's store?

A. No sir, I don't remember just what date it was.

Q. I mean what time of the day?

A. What time of the day?

Q. Yes.

A. It was in the morning one time and one time in the afternoon.

Q. Some of these goods that you packed were taken off the tables there in the basement, were they not?

A. Yes sir.

Q. Some were brought from upstairs, were they not?

A. I don't know whether brought from upstairs or not, I taken them off the table.

Q. You remember them on the table?

A. Yes I took them off the table and packed them.

Q. What you were doing was all open for any one to see that wanted to?

504 A. I don't know, I done it through Mr. Badders' orders.

Q. Any one that wanted to see it could have seen what you were doing?

A. Sure, if they looked.

Q. Was anybody else in the basement at the time?

A. Was anybody else in the basement at the time, I don't know.

Q. Do you recall whether you were assisted by any one in packing these cases?

A. What I packed I done myself.

Q. What you packed you did by yourself?

A. Yes sir.

Q. Was there any one else down there packing any other cases?

A. Not as I remember of.

Q. You packed it all alone?

A. I done the packing myself of what I done.

Q. Did you see those cases put on the Topeka Transfer Company's wagon?

A. No sir.

Q. Did you see the wagon come up there?

A. No sir.

Q. Now the day that goods came back you help to unpack them?

A. Helped to unpack, yes sir.

Q. Now what did you do with the empty cases or what became of them?

A. I rolled them outside I don't know what became of them.

Q. Did you put them out on the sidewalk?

A. Some I did and some I rolled up in the area way there.

Q. Do you know whether the Topeka Transfer Company's wagon come and got them that day?

A. No sir I don't know.

Q. You don't know what became of them?

A. No sir.

Q. Is there a wash room, toilet room, or wash room rather located in the part of the basement where you were packing the goods Mr. Thompson?

505 A. Well there is a sink there.

Q. Do you know whether any of the boys from the store were going to this wash room from time to time while you were down there?

A. While I was packing the goods, you mean?

Q. Yes.

A. I don't remember whether there was or not.

Q. You didn't pay any attention to them?

A. No sir.

Q. And about when did you say this was?



A. Well it was some time before Christmas.

Q. Mr. Thompson you have testified before on this subject, have you not?

A. I have yes sir.

Q. On the other occasion that you testified I will ask you if this question was asked you.

Mr. Robertson: We insist that the occasion be mentioned.

The Court: What?

Mr. Robertson: We object to that as being indefinite, no time or place or anything else fixed.

The Court: You may ask the question.

Q. Were you asked with reference to this matter of packing these goods, "Who got them" referring to the cases. Answer, "They were carried out and put on a transfer wagon." Question, "What transfer Company was that"? And you answered, "Topeka". Did you so testify Mr. Thompson on the other occasion?

A. I don't remember that at all.

Q. You don't recall that testimony?

A. No sir.

Q. Mr. Thompson when these goods were unpacked that you speak of do you remember Mr. Boyd assisting in unpacking the goods?

A. I don't remember who assisted in the unpacking of the goods, some of the boys, I don't know which, because some one place and some another.

Q. You know some others were there assisting in unpacking goods?

A. Some there, I don't know just who they were.

506 Q. You don't recall their names?

A. No sir.

(Witness excused.)

JAMES RICHARDSON, called as a witness on behalf of the plaintiff, having been first duly sworn, testifies, as follows:

Direct examination.

Questions by Mr. Brady:

Q. What is your name?

A. James Richardson.

Q. Where did you live?

A. Topeka.

Q. Do you know George S. Badders?

A. Yes sir.

Q. Were you employed in the Badders Company's store during the year 1913?

A. Yes sir.

Q. There during the month of November and December in that year?

A. Yes sir.

Q. And how long had you worked there?

A. About twelve years I guess on that corner.

Q. How is that?

A. About twelve years I guess on that corner.

Q. Then you were there when he came?

A. Yes sir.

Q. And continued until the time when the store was closed?

A. Yes sir.

Q. What was your business there?

A. Porter and general utility man.

Q. And did you pack a box of goods in the month of December, 1913?

A. Yes sir.

Q. From where did you get the goods you packed in this box?

A. In the basement.

507 Q. And what were the goods?

A. Clothing.

Q. What kind of clothing?

A. Overcoats and suits.

Q. Anything else besides over coats and suits?

A. I don't recollect.

Q. Any rain coats?

A. Yes sir I think there was some rain coats.

Q. Some grips?

A. Some grips, I don't recollect.

Q. You don't recollect?

A. I don't recollect grips if any there.

Q. Now how many boxes of goods did you pack there?

A. I don't know, four or five, something like that.

Q. You know about how many overcoats there were?

A. No sir, I haven't the slightest idea.

Q. Have any judgment how many suits there were?

A. No sir.

Q. And were they large or small boxes you packed?

A. Large boxes.

Q. Did you fill the boxes?

A. Yes sir.

Q. About what was the size of those boxes?

A. About what four men could take out.

Q. And were they packed full and tight with the clothing?

A. Yes sir.

Q. Do you know what became of those goods?

A. No sir.

Q. Do you know whether they were moved out of the store?

A. They was put on a wagon.

Q. Were you there when they were put on the wagon?

A. Yes sir.

Q. Do you know what transfer company it was, whose wagon it was they were put on?

A. Topeka Transfer Company.

Q. And do you remember how many boxes there were?

A. Something about like five as near as I can judge.

508 Q. And do you know what time in the month of December that was?

A. No sir, I don't recollect the date.

Q. Do you know what the make of the goods were, or the suits, whose brand was on them, any of them?

A. Some of them were Stein-Bloch.

Q. You remember any of the others?

A. No sir.

Q. And what others did you say there were, brands?

The Court: He didn't say.

Q. Were there any other brands that you recollect now?

A. Stein-Bloch is only one I remember.

Q. Only one you remember, at whose direction, if any one's did you box those goods?

A. Mr. Badders.

Q. Where was he when he told you to box them?

A. Down in the basement.

Q. What did he say?

A. He said box them up.

Q. How did you know what suits and what overcoats to put in those boxes?

A. He told me what to put in.

Q. Showed you the ones?

A. Yes sir.

Q. Did you ever see those goods and boxes after they had been hauled away by the Transfer Company?

A. I never seen them there.

Q. How is that?

A. I never seen them when they was hauled away, after they was hauled away.

Q. Well did you ever see any of them back in the store again? Or come back into the store?

A. I seen some looked like them, had the same number on them.

Q. What day was that?

A. I don't recollect what day.

Q. You remember the day the receiver came there?

509 A. No sir I don't recollect the day.

Q. You don't recollect the date but do you remember the receiver coming there on one date when he took charge?

A. When he took charge I wasn't there, when the receiver took charge.

Q. Did you unpack any goods on the day the receiver came and took charge?

A. No sir, I wasn't there.

Q. Do you know who it was that put these on the Topeka Transfer Wagon when they were taken away?

A. I know a couple of the gentlemen.

Q. Who were they?

A. Mr. Dusler and Mr. McDonald.

Q. Were you there?

A. Yes sir.

Q. Did you help?

A. No sir I didn't help.

Q. You say you didn't help move the boxes out of the building?

A. No sir.

Cross-examination.

Questions by Mr. McKeever:

Q. When did you quit work for Badders, Jim?

A. About the ninth of this month a year ago.

Q. And how did you happen to quit?

A. Mr. Badders said he didn't need me any longer.

Q. Where are you working now.

A. A. W. Vogle.

Q. Vogle, the cleaner?

A. Yes sir.

Q. How long was it before you quit before you saw these boxes taken out?

A. I don't know, ten, fifteen days I guess.

Q. You quit about two weeks before the store was turned over to Mr. Clark?

A. Along there some where.

Q. And how long before that you say that the boxes were taken out?

510 A. Some time in December.

Q. Did you help take them out?

A. Helped pack some of them, didn't help take out the boxes.

Q. Where did you pack them?

A. Down in the basement.

Q. Who helped you?

A. Thompson and I.

Q. Did you see them go out?

A. Yes sir.

Q. See them loaded?

A. Yes sir.

Q. Whose wagon?

A. Topeka Transfer Company.

Q. And you say you saw them come back, saw some like them afterwards?

A. I never saw the boxes come back.

Q. Did you see the clothing come back?

A. No sir never saw the clothing come back.

Q. Never saw the boxes or the clothing after that?

A. Saw some of the clothing afterwards.

Q. Where?

A. In the store.

Q. How do you know it was the same clothing?

A. Looked like some I packed up, had the same marks on it.

Q. They had the same marks on it, one firm's clothing?

A. All one firm's clothing, yes sir, I suppose they did.

Q. And you don't mean to say when you sent them out you sent all the clothing there was of that firm?

A. I don't suppose I did.

Q. Whose clothing was it you said you packed?

A. The ones I recollect was Stein-Bloch's.

Q. How do you remember that?

A. They all have a number up in the collar.

Q. All have what?

A. Have their number on them.

Q. What kind of a mark did Stein-Bloch have?

A. Have a little ticket up on the back of the collar.

511 Q. Didn't the rest of them have a ticket?

A. Some of them I suppose.

Q. The only one you can remember is Stein-Bloch, is it?

A. Yes sir.

Q. Was there a greater amount of the Stein-Bloch or just a few of them?

A. I suppose a case.

Q. A case. Well now what do you mean by a case, one of those boxes?

A. I suppose four or five hundred pound box.

Q. Thompson was with you was he?

A. Yes sir.

Q. Did Thompson see them loaded on the wagon with you when you saw them loaded?

A. He was there.

Q. Where were you upstairs out on the sidewalk?

A. In the basement.

Q. And you could see them loaded from the basement?

A. Yes sir.

Q. Wagons back into the alley or by the side of the building?

A. Side of the building.

Q. Taken out at the side?

A. Taken out at the side yes sir.

Q. Day time or night?

A. Day time.

Q. Broad day light?

A. Yes sir.

Q. And taken out there by several men and loaded on the wagons?

A. Yes sir.

Q. In forenoon or afternoon?

A. In afternoon.

Q. Anybody could see you loading them, couldn't they?

A. Yes sir.

(Witness excused.)

512 H. T. SPIESBERGER, called as a witness on behalf of the plaintiff, having been first duly sworn, testifies, as follows:

Direct examination.

Questions by Mr. Robertson:

Q. What is your name?

A. H. T. Spiesberger.

Q. Where do you live Mr. Spiesberger?

A. Chicago, Illinois.

Q. Are you acquainted with the defendant?

A. I am.

Q. What is your business?

A. I am credit man and general manager for Alfred Decker & Cohn, Chicago, Illinois.

Q. What is their business?

A. The wholesale manufacture of clothing known as Society Brand clothes.

Q. How long have you occupied that position with that concern?

A. Six years.

Q. When did you become acquainted with the defendant?

A. I think it must have been during the year 1912, or at the end of 1911, it was at the time that he went into business at Topeka.

Q. Did you sell goods to the Badders Clothing Company?

A. The firm of Alfred Decker & Cohn did.

Q. That is what I mean?

A. Yes.

Q. And is your firm a creditor today of the Badders Clothing Company?

A. It is.

Q. To what extent, if you know?

A. To the extent of \$1986. I believe is the correct amount.

Q. Were you ever out to Topeka, Kansas, to see the defendant?

A. I was.

Q. When was that?

A. Saturday, December 27th, 1913.

513 Q. Had you seen him some time previous to that in Chicago?

A. I had, some time during the month of November, 1913.

Q. Explain to the jury what the occasion was of your seeing him in Chicago at that time?

A. At that time I saw Mr. Badders on two occasions, the first time I was in the office of Mr. Alfred Decker of our firm when Mr. Badders came in and mentioned that he was there for the purpose of buying goods for an immense sale that he proposed to put on during the month of December and that he was looking for some merchandise at a price.

Q. Did you have conversations with Mr. Badders?

A. Not at that time; he was given into the charge of a salesman and went upstairs to our sample room.

Q. When if at all after that did you have a conversation with him?

A. The Saturday afternoon of the same week he came into my office alone about two thirty.

Q. Go ahead and tell the jury what occurred between you there and what was said by either of you?

A. Well Mr. Badders came into my office at about two thirty that afternoon and was with me until five o'clock. His conversation was a general one with reference to his business and with reference to the objects of his visit. I asked him whether he had been able to secure any goods from us, the last I had seen of him was when he went upstairs a few days previous to go to the sample room; I didn't know definitely whether he had made any purchases or not; I asked him if he bought any goods and he mentioned that he couldn't find any cheap enough for his purposes to buy from us; he spoke to us about the increase of his capital.

Q. What did he say?

A. He told me they were increasing their capital stock from thirty five to sixty thousand dollars. He further said that on account of the changes that were going on there, and increase of capital, they had not paid their fall bills as yet but would positively be paid by the fifteenth of December, and also asked me whether I wouldn't  
514 afford him the accommodation of allowing him the full discount if he paid by December fifteenth; and I told him that in view of the changes he had been talking to me about, and the increase of this capital stock, that I would grant the full discount of seven per cent if paid promptly by December fifteenth, and he assured me positively that it would be paid by that time.

Q. Upon that occasion did he buy any goods from your house?

A. No sir, not upon that occasion; he mentioned that he could not buy any goods, before, because we did not offer him any cheap enough. He further told me when I asked him about whether he bought any goods from us, that he would be compelled to seek merchandise elsewhere outside of his regular lines, and that he would take the liberty in referring any new accounts whom he visited to us for the purpose of credit reference, and asked whether I would please respond to them; and I told him that I would be glad, in the usual course, to exchange information and give such information as we had to give if we received inquiries.

Q. Mr. Spiesberger how large a volume of business does your concern do per year?

A. Well it mounts up into the millions.

Q. Was you- account then in the same condition as to amount that it is now, if you know?

A. I believe it was exactly the same; we may have shipped one suit, or something on a mail order after that, but it is practically the same today as it was then, close to two thousand dollars.

Q. Do you know Seward R. Graham?

A. I understand he lives in Hiawatha, Kansas.

Q. And was he at one time connected with your house?

A. No sir.

Q. I will ask you whether there is an acquaintance of years between him and some member of your house, if you know? And state, if you know, what the facts are?

A. I do know there is an acquaintance of many years between Seward R. Graham and Alfred Decker of our firm.

Q. State if you know whether that was always friendly or otherwise?

515 A. They have always been friends for many years.

Q. What is Mr. Graham's business, if you know?

A. Mr. Graham is in the retail clothing business in Hiawatha, Kansas, and I believe has some five or six other stores located through the middle west here.

Q. He is what is claimed a wealthy man?

A. I understand he is a wealthy man, and his credit is reported to be first class amongst credit men, the firm I believe is Graham and Brothers.

Q. Is that the Mr. Seward R. Graham who has been referred to as secretary treasurer of the Badders Company?

A. Yes, the same.

Q. Have you ever seen Mr. Badders sign his name?

A. No sir, I have seen many letters with the signature George R. Badders written on them.

Q. George R. or George S. Badders?

A. George S.

Q. I hand you a paper marked Exhibit No. 47 and ask you to state if you know anything about whether that came through the regular course of the mail to your house or not?

A. It did, it bears our time receiving stamp on the reverse side and is addressed to us and is in response to a letter which I wrote, a letter of inquiry.

Q. When was it received at your house?

A. Received by us August 26, 1913.

Q. Whose signature does it bear?

A. It bears the signature of the Badders Company by George S. Badders.

Mr. Robertson: We offer exhibit No. 47 in evidence.

Mr. Hite: The only objection we have, Your Honor, the identification of the signature does not seem to be complete.

The Court: Well I think so. He objects to it on the ground the signature of Mr. Badders has not been sufficiently identified or proven.

Mr. Robertson: The witness says it was received through the regular course of the mails, that would raise the presumption it came from Mr. Badders.

516 The Court: I don't think it raises any such presumption. If you have anybody you can prove the signature by, that is another thing. Have to do it before it is received.

Mr. Hite: We want the government to prove its case; we only ask for reasonable proof.

The Court: I have ruled on it, that it is incompetent.



Mr. Hite: The government is asking me to waive it, Your Honor, is all, and I was stating out position.

Mr. Robertson: We will get to it.

Q. You say you were out to Topeka Mr. Spiesberger?

A. Yes sir.

Q. When was that?

A. Saturday December 26, 1913, it was the day after Christmas.

Q. How did you come to be there.

A. Pardon me, it was the second day after Christmas. I left Chicago the day after Christmas, Friday evening, and was in Topeka Saturday, the 27th.

Q. What was the occasion of your visit there?

A. The occasion was to try and collect our account.

Q. Did you have conversations with Mr. Badders upon that occasion?

A. I did.

Q. How long were you there?

A. I was there from noon until six o'clock and had three conversations with him.

Q. I hand you two papers, one marked Exhibit No. 50, and one marked Exhibit No. 52, and ask you if you had conversations with Mr. Badders concerning these two papers?

A. This one I did not because it is dated January 15th, that was after I was there.

Q. Exhibit No. 52?

A. Exhibit No. 52; but I did have conversation with him about Exhibit No. 51, which was received by us just before I left Chicago.

Q. State what was said about it?

A. May I give the conversation leading up to it?

Q. Give the whole thing.

517 A. When I arrived in Topeka I immediately went to the store of the Badders Company; as I went into the store Mr. Badders was coming out and he told me that he was going out on a little business but would see me shortly; he asked where he could see me and I told him I would be across the street at the hotel and he said he would be there at twelve thirty. I went there for him and he came in at a quarter to one and he told me he couldn't give me very much time that he was very busy. I told him I expected him to give me considerable time because I had come quite a distance to see him about our account. He said, "What about your account?" I said, "I am here to collect the money." "Well," he said, "Didn't you see the letter Mr. Graham wrote to Mr. Decker?" I said, "No, I have not seen that letter," although I had it with me in my grip, but I told him I hadn't seen it. He said, "I am awfully sorry you didn't see that letter because that letter explains everything and fixes everything up in a satisfactory manner." Well, I told him "Regardless of any letter that he had written I was there to collect our account and I wanted our money." Well, he said, "Now that is too bad that you didn't see that letter Mr. Graham wrote to Mr. Decker because that arranges everything and everything is taken

care of, and everything is all right, you don't need to worry; too bad you came such a distance because if you had seen the letter before you left you never would have had to make the trip." That lasted for about fifteen minutes and then I turned to Mr. Badders, and I said, "Now see here Mr. Badders, I have seen that letter; I have got it right with me, and that letter does not explain anything to me, nor is it at all satisfactory; it does not agree to pay that account, it simply says that the writer thinks we will get our money and that everything will be all right; the letter (I said) is entirely unsatisfactory to me as a credit man." Well, when I said that, he flushed, turned quit-red, and then said he wanted to see the letter, and I said, "I will show it to you." And my grip was there at the check room in the hotel; I got the letter, took it out of my file, and showed it to him, and I said, "Now where does that letter  
518 fix up everything?" Well, he then said "that he didn't have anything more to say about it." I then referred to a letter we had received from him in which he said a check would be sent us on Wednesday of that week, a letter written by him on Monday, in which he said that he did not——

Mr. Harkless: The letter is the best evidence of what it is.

A. Well, the letter is here.

The Court: Well, did you speak to him about the letter?

A. Yes sir, I said to him, "You promised in your letter of Monday of this week to send us a check on Wednesday, and when on Friday, the day after Christmas we did not receive your check, as per your promise, I came out here." I said, "Now what happened between Monday, the day that you promised you would send the check, between Monday, the day you wrote you would send the check, and Wednesday the day you promised to send it; what has happened between those two days that you didn't send us the check?" He said, "I refuse to answer." I said, "Either you lied when you wrote that letter that you would send that check or something has come up to prevent you sending it; now tell me, what came up?" "I can't answer" that was his answer. To every question that I put to him he then said, "I refuse to answer," or, "I can't answer." I then told Mr. Badders that I would not leave Topeka without taking some action on our claim and that I would place the matter in the hands of our attorney there before I left the city. He then left the hotel and I had not had dinner yet and I had a bite to eat. While I was eating I was called to the telephone and it was Mr. Badders on the wire. He asked me to come over to the store. I went over to the store and Mr. Badders took me down to the basement and we had another conversation there. He said to me, "When you asked me this morning why I didn't send you that check, as per my promise, did you know of any suit that had been brought against me?" I said, "No sir, I did not." "Well," he said, "I thought it over and I have come to the conclusion that  
519 I might as well tell you why I couldn't send you the check." He said, "I promised you on Monday to send it; well, on Tuesday Rosenwald & Weil started a garnishment suit against

me and tied up my bank account and that is why I couldn't send you the check on Wednesday." "Well", I said, "Why didn't you tell me that in the first place, there is nothing so terrible about that?" "Well", he said, "I thought you would want to start a garnishment suit if I mentioned to you they had, and that is why I didn't tell you." I said to him, "How much did they catch in your bank account?" He said, "Between twenty and thirty thousand dollars is tied up in the bank by the garnishment suit." I then said to him, "How much is Rosenwald & Weil's claim?" He said, "In the neighborhood of eight or nine hundred dollars." I said, "My goodness man, why don't you have that garnishment released; let that much money stay in the bank and use the other money and disburse it to your creditors." I said, "Do you realize all of your creditors throughout the country are going to jump on your neck within the next few days, all becoming very impatient for their money." He said, "Rosenwald & Weil will pay heavily for this; I am going to leave my money tied up and they will pay me damages for it." I said, "Mr. Badders, you remind me of a man who gets his leg cut off by a railroad and is satisfied to have it cut off as long as he gets damages;" I says, "That is your case here, you are killing yourself commercially just to recover the damages." He says, "That is what I am going to do." I talked to him for half an hour to try and persuade him to let the money stay in the bank, which he said was there, between twenty and thirty thousand dollars, and use the rest of that money to pay his creditors with. I tried to get him to give me some money out of the day's cash receipts; they were very busy in the store, lot of people up there, but he wouldn't do anything. He assured me on his honor, he said to me, "I assure you on my honor as man to man you will not lose anything by not taking action to-day." I asked him whether his sale had been a success; he told me that from December 5th up until the time I was there the receipts were over thirty thousand dollars and that with what had already been taken in, and what he expected to sell during the month of January, he thought he would pay his creditors in full. I couldn't get him to pay me any money so I told him that I was going now to place the claim in the hands of an attorney. I went to the offices of Wheeler and Switzer, attorneys in Topeka, and placed the claim with Mr. Wheeler, and then Mr. Wheeler and myself went back to the store of the Badders Company.

Q. Did you have a conversation when Mr. Wheeler was present?

A. We did.

Q. What was that?

A. Mr. Badders took Mr. Wheeler and myself down into the basement to the same place where I had previously conversed with him and the conversation was just the same as Mr. Badders and I had previously except Mr. Wheeler joined in with me in urging Badders to let the money stay in the bank to cover the suit that had been brought and use the rest of the money in paying his creditors. He said he knew what he was doing and he would not take any such action. We had about a fifteen or twenty minutes' conversation. I spoke to Mr. Badders from the bottom of my heart where

I was there that day in urging him to do what I thought was the right thing, and we then left his store. He assured me again in the presence of Mr. Wheeler, as man to man, that we would not lose a dollar on our claim.

Q. Mr. Spiesberger had you been in any manner instigated or caused to go out to Topeka by any other creditors?

A. No sir, went of our own accord because his promise to make payment of the fifteenth of December had not been kept and our draft had been returned unpaid.

Q. You had made a sight draft?

A. We made a sight draft on the 18th or 19th.

Q. And it had been returned?

A. It had been returned unpaid; and furthermore, because of his promise of Monday of Christmas week to send a check on Wednesday had not been kept.

Q. Mr. Spiesberger what bank, if you learned, in what bank was this money claimed by Mr. Badders to be deposited in?

A. I believe the Bank of Topeka, he said it was in.

521 Q. Do you recall anything further said between you there?

A. Not at this moment.

Mr. Robertson: We offer Exhibit No. 51 in evidence. That is the letter that he and Mr. Badders had the conversation about, in which Mr. Badders told him it squared everything with the house, signed by Seward R. Graham.

The Court: Yes, I understand about that.

Mr. Hite: It is objected to as incompetent, irrelevant and immaterial, hearsay; not binding upon this defendant, any declarations that Mr. Graham might make certainly cannot be imputed to this defendant.

The Court: What if anything did he say about this letter having been sent by Graham, if anything, by his authority. Did he say he had written the letter or authorized it?

A. Well, I showed him the letter and he said, "Yes, this is the letter." I said, "Is this the letter you mean?" He wanted to see if I really had the letter in my grip; I wanted to see what he would say. And then I took it out of my grip and showed it to him.

The Court: And he said that was the letter?

A. Yes sir.

The Court: Read it.

Mr. Hite: Except.

Mr. Robertson, reading Exhibit No. 51.

(A copy of Exhibit No. 51 is attached hereto and made a part hereof.)

A. May it please the court, there is another remark that Mr. Badders made while I was there that just comes to my mind.

Mr. Hite: If Your Honor please, we move to strike the letter out as a mere declaration of Mr. Graham's, not having been shown to have been made by authority of Mr. Badders.

The Court: I authorized the letter to be read, to which you ob-

jected, and when I ruled you excepted, and now you renew the same objection in a different form to the one you made.

Mr. Hite: I didn't know that I had made it exactly that way.

The Court: I overruled that objection although the second one is a repetition practically of the first.

522 Mr. Hite: Except.

Mr. Robinson:

Q. What is the conversation you recall?

A. Mr. Badders offered me his personal guarantee of our account, and I asked him whether he would make a statement to me as to his personal worth, which he refused to do; and I then said, "If you will not tell me what you are worth personally, as a credit man I certainly would not accept your personal guarantee"; and he said, "Well, if you will not accept it without me making a statement of my personal worth, then I won't give it."

Mr. Robertson: Your Honor, we reserve the right to identify this letter that came up a while ago, the signature to which Mr. Spiesberger cannot say.

The Court: He identified certain letters he received, as I understand it, bearing the purported signature of Mr. Badders, but about which he could not identify his signature. Now you will call witnesses to identify the signature of Badders on the paper that you offer.

Mr. Robertson: That is what I desire to do.

The Court: That may be done.

Cross-examination.

Questions by Mr. McKeever:

Q. Mr. Spiesberger, you are the credit man of Alfred Decker & Cohn of Chicago?

A. Yes sir.

Q. They are dealers in clothing, manufacturers?

A. Manufacturers?

Q. What are the duties of a credit man, briefly?

A. Briefly, it is to pass upon the credit of customers.

Q. Well, you watch all of your customers and keep a careful scrutiny of their dealings and of their business affairs for the purpose of advising your employers of what line of credit to extend to them, don't you?

A. Yes that is in a general way stating the case.

523 Q. And that is a part of your business, to keep in touch with them, and you keep in touch with them by correspondence and by watching their dealings with you and other people and through the commercial agencies; that your method?

A. Principally through the commercial agencies.

Q. Principally through the commercial agencies. And you get daily reports, do you?

A. Not daily reports on every account, we only get reports on such accounts as we inquire about them, and then after our names

re once registered as being interested in an account any important developments in that account are sent us by the agencies.

Q. Now you had been doing business in December, 1913, you had been doing business with Mr. Badders for some time had you not?

A. Yes sir, from the time, I believe that Badders bought out or bought into the Robinson Marshall Company.

Q. That had been a year or two before, wasn't it?

A. About a year and a half I believe.

Q. He had always paid his bills?

A. He had always paid his bills, yes sir.

Q. And paid them promptly?

A. I won't say promptly, he had paid them fairly promptly.

Q. Had he taken his discounts?

A. He took discounts, yes sir.

Q. He was your first Topeka customer, wasn't he?

A. I believe he was.

Q. And your only Topeka customer?

A. Yes sir, he was the only one at that time, we only sell——

Q. Sell one person in a town?

A. Yes.

Q. He had advertised your line extensively, hadn't he, and pushed

A. I don't know as to his advertising it, I never go into——

Q. And until December 1913 you had never had an occasion to doubt him had you?

A. No sir.

Q. He had always acted in absolute good faith with you, hadn't

A. We thought so.

Q. And advised you freely of everything you wanted to know?

A. Yes.

Q. He had had one formerly, what you might call, or what he pleased to call a sensational sale, hadn't he?

A. I don't know how many sensational sales he had had.

Q. Well, didn't he have a sale when he first bought into the place by which he *realized* about sixty thousand dollars, to your personal knowledge?

A. I don't know whether his sale or under the name of the corporation.

Q. But after he became connected with it?

A. Yes sir.

Q. Did you have any of your clothing in that sale?

A. No sir.

Q. How soon after that did you begin to sell him?

A. After they reorganized and they called it the Badders Clothing Company.

Q. Along perhaps six months afterwards or a year?

A. I don't know.

Q. And up to the time he had this sensational sale in December 1913 you had not had any occasion to doubt him?

A. No, no occasion.

Q. He never had concealed anything from you?

A. Not that we knew of.

Q. And when he got ready for this sale he sent you notice, telling you exactly what he was going to do; first came to Chicago and told you personally.

A. Yes he said he was going to put on a big sale.

Q. And spent an hour or two with you discussing as to just how he was going to do it?

A. Well he never discussed the sale so much.

Q. He was going through your house there looking at lines of goods?

A. Yes.

Q. And told you he wanted a certain kind of article in order to promote this sale?

A. Wanted to buy merchandise at a price for the sale.

525 Q. And did he buy any of you?

A. No sir.

Q. When did he incur this indebtedness of which you complain here?

A. That was for goods shipped him during the regular fall season of 1913.

Q. Which had been ordered in the spring before.

A. Which had been ordered in the spring before.

Q. Now didn't he cancel during that summer or late in the summer a large number of goods he had ordered from you?

A. I don't recall.

Q. You say that he didn't?

A. I said I don't recall.

Q. You don't recall one way or the other?

A. I don't recall about his cancelling any goods.

Q. As a credit man wasn't it your business to watch that?

A. No, I don't watch that; that is watched for from the sales department.

Q. And the cancellations are not reported to you for your advice and information in connection with your business as a credit man?

A. They are if they are material cancellations, what I mean is, an entire order or a substantial part of an order.

Q. And he didn't buy any of you when in Chicago prior to his sale then?

A. No sir.

Q. This entire debt has been incurred before?

A. Yes sir.

Q. When he got ready to make this sale, or very shortly before, he wrote you a letter which has been introduced here, he sent you a circular advising you of the fact he was about to put that sale on?

A. Well I will have to see that letter before I can say whether we received such a one.

Q. Did you get any information through Dunn and Bradstreet of this sale?



A. No sir.

26 Q. They didn't report it to you at all?

A. I don't recall that they did.

Q. And when you heard of it what did you do about it, take the matter up with him or write to him about it?

A. What, that he was going to have a big sale?

Q. Yes, that he was going to put on a big sale?

A. No, I didn't take it up with him.

Q. The first occasion you had to go to Topeka was the day after Christmas to talk with him about this indebtedness?

A. I talked to him about it in November when he was in my office.

Q. You talked to him about it when he was in your office in November?

A. Yes sir, he promised to pay it on December fifteenth, with his increased capital and proceeds out of the sale.

Q. He was in your office when he came to buy goods?

A. Yes sir.

Q. And he told you about the middle of December, or thereabouts, didn't fix any specific time?

A. Absolutely, on December fifteenth it would be paid.

Q. That he would be in position to pay it and mentioned the fact he would raise it from the sale or the sale of stock?

A. From two things; he said, "by that time my sale will be running along pretty good and I am going to increase my capital stock from thirty five to sixty thousand dollars."

Q. Tell you whether he owed anybody else or not?

A. I didn't go into that.

Q. Did you keep any track as to whether he did owe anybody else?

A. No I was not keeping track of him specially.

Q. And you didn't go down then again until after Christmas?

A. After Christmas.

Q. Now when you came down the next time Mr. Spiesberger you were down pretty mad, didn't you?

A. Well, no, I was not particularly angry.

Q. Well, you sort of tried to run a bluff on him the first thing when you landed in town, didn't you?

7 A. About that letter?

Q. About what he owed you?

A. That is not running a bluff, he really owed us the money.

Q. But you began to tell him the things that might happen to him?

A. No sir, not until our conversation was almost over and then I told him I would not leave town without taking some action; I told him I would place the matter in the hands of an attorney.

Q. Was that as far as you went, that you told him you would place the matters in the hands of an attorney?

A. I told him I would place the matter in the hands of an attorney.



Q. And didn't you tell him what you contemplated would happen then?

A. No sir.

Q. You deceived him at first about this Graham letter, didn't you?

A. No more than he deceived me.

Q. I am asking you if you deceived him about the Graham letter and about having it?

The Court: He said he told him first he didn't have the letter; afterwards he told him he did and showed it to him.

A. I don't know whether he was deceived.

Mr. McKeever:

Q. And why did you deceive him about having received the letter?

A. I wanted to see what he would say about the letter.

Q. Why did you want to see what he would say?

A. To see whether he would truthfully talk about the letter.

Q. Yes, in what respect?

A. He started right off with the letter; I didn't deliberately, or have it formulated in my mind I wouldn't talk to him about that letter, but he came right at me, "Haven't you seen the letter Decker received from Graham?"

Q. There was such a letter?

A. Yes sir.

528 Q. Wasn't there. And Mr. Graham was a very close friend of Mr. Decker?

A. Yes sir.

Q. So close he called him "Dear Al".

A. Correct.

Q. Had they been boys together?

A. Young men together.

Q. And had been close and friendly acquaintances for years?

A. Yes sir.

Q. Now that letter you say didn't satisfy you?

A. Absolutely not.

Q. Didn't he tell him there he believed he would get his money?

A. Legally that meant nothing to me as credit man.

Q. You didn't believe Mr. Decker's friend who was giving financial advice?

A. I never accept any letters like that as a guaranty for any debt.

Q. You came out there to see if you couldn't get it out of somebody else?

The Court: That is not proper cross examination, I don't think that is proper examination in any court. Let the examination be conducted in a proper manner.

Q. In other words you were trying to get ahead of somebody whom you thought might be pursuing Mr. Badders at that time?

A. That was not the case, no sir, I was there to collect the money.

Q. That was not your intention; and you told him that in a few

days you thought all of his creditors would be on his neck, didn't you?

A. Yes, he told me there were three other claims already in the hands of attorneys.

Q. He told you that?

A. He told me that.

Q. And he finally explained to you he couldn't keep the promise to you because the money in the bank had been tied up by garnishment by one of your neighbors in Chicago, Rosenwald & Weil live in Chicago?

A. He told me the bank account had been garnisheed by Rosenwald & Weil and between twenty and thirty thousand dollars been tied up.

Q. And when you investigated you found it had been garnisheed?

A. Yes, and there was ninety one dollars in the bank and not between twenty and thirty thousand dollars.

Q. Did you make that investigation.

A. No, our attorney did.

Q. Personally you don't know how many dollars was in the bank or tied up in the bank?

A. Personally, how do you mean?

Q. Do you make a statement here to this jury he only had ninety dollars in that bank?

A. I make that statement on the advice of my counsel.

Mr. McKeever: I ask that it be taken from the consideration of the jury.

The Court: That will be followed by something else or the testimony in that regard will be excluded.

Q. Now you have had a great deal of experience in reference to bankruptcy, have you not Mr. Spiesberger?

A. No sir, I have not.

Q. Well, you know the ordinary rules of bankruptcy, don't you?

A. I guess I know you have to file a claim.

Q. And you know that if he pays one creditor when other creditors are pressing him that that constitutes an act of bankruptcy and may result in his being thrown into bankruptcy, don't you?

Mr. Robertson: Objected to as not cross examination.

The Court: It is not cross examination and as far as the bankrupt law is concerned, he need not go into any statement of that; every man knows that a man who pays money, when he is insolvent, to another, with a view of preferring that debt, that that is an act of bankruptcy.

Mr. McKeever: Now, Your Honor, I will explain to you that the very reason I asked that is that the jury does not know it unless they have had personal experience——

The Court: If the jury don't, and will ask me any question, I will explain about it, and I will not permit it in the examination of this witness.

Mr. McKeever: What I desire to do is to show, for the benefit

of the defendant, he was doing the very best he could, he was not trying to defraud Mr. Spiesberger or anybody else; now I want to show that.

The Court: All that this has reference to on the face of the earth that the court can see, is, that this man went there for the purpose of trying to collect a debt and had the conversation with the man who had promised to pay the debt, with a view of showing the indebtedness existed, and that he didn't get the money.

Mr. McKeever: But the inference——

The Court: Ask your question and I will rule on it.

Mr. McKeever: I will try to. I didn't think the jury did understand the bankruptcy law is the only reason I asked that question, and did it in absolute good faith, tried to.

The Court: People besides juries may not understand it.

Mr. McKeever: Probably some of the lawyers don't.

Q. Now then Mr. Spiesberger it was not long afterwards until he did go into bankruptcy, was it?

A. As I recall it it was almost thirty days, toward the end of January, I think, my best recollection the petition was filed.

Q. I will ask you if he didn't say this to you, that after you gave him this advice about his creditors jumping on his neck, if he didn't tell you that you was trying to get him to pay this so you could throw him into bankruptcy?

A. Absolutely no.

Q. You didn't tell him anything of that kind?

A. You ask me if I didn't tell him?

Q. Have any conversation of that kind at all?

A. No sir, I didn't want him to go into bankruptcy, I wanted the money.

531 Q. You belong to the National Credit Men's Association Mr. Spiesberger?

A. Yes sir.

Q. I will ask you to state if the National Credit Men's Association has an official organ known as the Bulletin?

Mr. Robertson: Objected to as immaterial.

The Court: Sustained.

Q. I will ask you to state if the National Credit Men's Association contributed any fund to the prosecution of this case criminally?

Mr. Robertson: Objected to as immaterial and not cross examination.

The Court: You may state whether to your knowledge any fund has been provided for the prosecution of this case from that fund.

A. I don't know whether anything has been contributed specifically to this prosecution; I do know that some money was set aside in this matter——

Mr. McKeever:

Q. For the prosecution of this man here in the Federal Court of the United States?

A. That I can't answer.

Q. What was it set aside for?

Mr. Robertson: Mr. McKeever, are you going to contend to this court and jury there has been a single cent of anybody's money out in this prosecution?

The Court: I am talking here about this case; if the government of the United States in the prosecution of this case has to rely on the National Credit Men's Association, let us know it, I want to know

A. I don't know it.

Mr. McKeever: I would like to go into it——

The Court: We will not go into it, and the objection is sustained.

Mr. McKeever: Except. May I ask a question or two further about this fund?

The Court: Yes.

Q. What was the amount of that fund, Mr. Spiesberger that you spoke of a few minutes ago?

A. I don't know the amount of the fund.

Q. Who contributed to it?

A. I understood that the National Association of Credit Men contributed some money as to the investigation of these goods that went out of the store, to locate them, and to locate accounts by Badders in Topeka, that was spent in the bankruptcy matter.

Q. How much did your firm contribute?

A. To this investigation?

Q. Yes?

A. We contributed five per cent of our claim, in the neighborhood of ninety nine dollars, and sent a check to Messrs. McClintock Quant.

Q. Messrs. McClintock and Quant your attorneys at Topeka?

A. They subsequently became attorneys for all creditors?

Q. And McClintock & Quant are now your attorneys?

A. No, Wheeler and Switzer still remain our attorneys of record.

Mr. Robertson: Mr. McKeever——

Mr. McKeever: Any time you address the court I will stop.

Mr. Robertson: I was trying to address the court and you were trying to prevent it.

Mr. Robertson: Objected to as not cross examination.

The Court: It is not cross examination; and the fact of a contention to investigate the loss of goods, or of these accounts, has nothing to do with the criminal prosecution.

Mr. McKeever: Except. Your Honor rule my investigation must be on that subject?

Q. Did you get a report from the mercantile reports concerning increase of capital stock?

A. I believe we did get a pink slip to the effect the Badders Company had filed a notice with the secretary of State of intention to increase capital stock from thirty five to sixty thousand dollars.

Q. Do you know when that was?

533 A. I couldn't recall the exact date.

Q. Was it when you were down in November or afterwards?

A. I was not there in November.

Q. Or when you talked to him in November in Chicago?

A. I am inclined to think it was shortly after, I can't recall it.

Q. At that time you did know the capital stock had been increased in the form of a note, didn't you?

A. In the form of a note?

Q. By a note?

A. What do you mean by in the form of a note?

Q. By somebody giving a note for stock?

A. No sir, I did not know that.

Q. Didn't you get such a report from the mercantile agencies?

A. No sir, the report we received from the mercantile agencies simply said a notice had been filed with the secretary of state of intention of increasing capital stock.

Q. Did you request any further information from the mercantile agency on the subject?

A. No sir.

Q. Did you get any before the fifteenth of December?

A. I don't believe we did.

Q. You got this information before the 15th of December?

A. Yes, and he also told me about it in November.

Q. Did he tell you in November he then had increased or intended to?

A. He said he was then in the act of increasing it.

Q. Did he say anything about to whom the stock had been sold or what for?

A. No, he said we will have twenty five thousand dollars additional cash in the business.

Q. And that is all he said about it?

A. Yes.

Q. Now McClintock & Quant of Topeka are attorneys for the National Credit Men's Association, are they not?

A. I don't know.

Q. Did you have a circular from them concerning this  
534 bankruptcy matter?

A. No we didn't but I saw their circular.

Mr. Robertson: Objected to as entirely immaterial. As I understand it we are not here to try the bankruptcy case, Your Honor, and I object as not cross examination.

The Court: Sustained.

Mr. McKeever: Except.

Redirect examination.

Questions by Mr. Robertson:

The Court: Does this grow out of the cross examination or is it an independent matter?

Mr. Robertson: Grows out of the cross examination.

The Court: Confine it to that.

Q. Have you ever been called upon by any representative of the United States, or anybody else, to contribute one cent to this criminal prosecution in any manner whatsoever?

A. No sir, we have not.

Q. How do you come to be here?

A. I was subpoenaed.

Q. Would you have been here if you hadn't been subpoenaed?

The Court: That does not make any difference, he is here, and I suppose he came under a subpoena issued by the government.

A. Yes sir.

Mr. Robertson: He did.

The Court: This is very unnecessary, in my judgment.

Mr. McKeever: We want to recall this witness for short cross examination in that matter.

The Court: No, examine him now.

Mr. McKeever: It is in regard to a written instrument we have at the hotel.

The Court: What is it?

Mr. McKeever: It is a bulletin, I do not care to state before the jury what it will show, but it is a bulletin or magazine of the National Association of Credit men, has to do with the question I asked him about and concerning which he has testified and testified contrary to what is in this bulletin; that is my proposition.

35 The Court: If the Credit Men's Association has got anything to do with this prosecution, or contributed anything to the prosecution of this suit, it might be legitimate; whatever they might do in regard to bankruptcy proceedings has nothing whatever to do here.

Mr. Harkless: Except.

Mr. McKeever: What I want to ask him about has nothing to do with the bankruptcy matter.

The Court: I have had about as much of this interruption by two or three attorneys as I intend to have. Whenever one attorney is examining a witness he will go through with that examination and not be interrupted by any one else or by exceptions made by others than the man examining the witness.

Mr. McKeever: This is the first time I have put my head into this case from the start.

The Court: Been a good deal of this going on here and got to end some time or other. Call your next witness.

Mr. Harkless: Except to the rule, Your Honor. I didn't understand you ruled against him.

The Court: I did not rule against you. You may cross examine the morning.

Mr. McKeever: Very well, thank you.

(Witness excused.)

S. R. BOYD, called as a witness on behalf of the plaintiff, having been first duly sworn, testifies, as follows:

Direct examination.

Questions by Mr. Robertson:

Q. Mr. Boyd, are you familiar with Mr. Badders' signature?

A. Yes sir.

Q. I hand you a paper marked Exhibit No. 47 and ask you if that bears Mr. Badders' signature?

A. I think it does.

Q. Hand you paper marked Exhibit No. 48 and ask you if that bears his signature?

A. I think it does.

Q. Hand you paper marked Exhibit No. 49 and ask you if  
536 that contains Mr. Badders' signature?

A. I think it does.

Q. Hand you paper marked Exhibit No. 50 and ask you if you find Mr. Badders' signature on that?

A. I think that is.

Q. You say that is is?

A. I do.

Mr. Robertson: Offer Exhibit No. 47 in evidence.

Mr. Hite: Objected to for the same reasons heretofore given.

The Court: Those were the papers identified by another witness?

Mr. Robertson: Mr. Spiesberger; these are the papers that I called to the attention of Mr. Spiesberger, all but one of them, and one of them marked Exhibit No. 52 is unnecessarily introduced now because of the testimony that came out from Mr. Spiesberger.

The Court: Read them sir.

—: Except.

Mr. Robertson, reading Exhibit No. 47.

Mr. Hite: Exhibit No. 48 is objected to for the same reasons stated before.

The Court: Overruled.

—: Except.

Mr. Robertson, reading Exhibit No. 48 to the jury.

Mr. Hite: Exhibit No. 49, we object to this for the same reasons heretofore given.

The Court: I understand they were objected to by Mr. Hite. I will allow an exception to the ruling on each of them.

Mr. Robertson, reading Exhibits, No. 49 and 50.

Defendant excepts to the ruling.

(Copies of exhibits numbers 47, 48, 49 and 50 are attached hereto and made a part hereof.)

(Witness excused.)

(9:10 p. m.)

The Court: Gentlemen, be back in your seats tomorrow morning.

in charge of the Marshal, at half past nine o'clock. And court will adjourn until half past nine tomorrow morning.

(9:30 A. M. TUESDAY, January 26, 1915.)

537 MR. SPIESBERGER (recalled).

Recross-examination:

The Court: Before we proceed here this morning, let me suggest to counsel, that we would get along better with less friction if one attorney examining a witness is left alone, and to make his objections and save his exceptions without continued interruptions by others; and one at a time will be hereafter considered by this court.

Questions by Mr. McKeever:

Q. Mr. Spiesberger I understood you to first state yesterday that the National Credit Men's Association were contributing to the prosecution of the Badders Company or Mr. Badders, and then when you heard this Honorable Court express himself as to a matter of that kind you changed and said it was in the bankruptcy case?

The Court: I will not permit this argument; he did not say any such a thing. I desire no interruptions by counsel. If you have a question, ask him the question, and let me rule on it, without undertaking to recount what he said, or anything said; ask the question and I will rule on it.

Q. Mr. Spiesberger I will ask you to examine this book here and state if you know what it is, the book.

The Court: Do you know what it is?

A. Yes. It says on the front of it what it is.

Mr. McKeever:

Q. Well, what do you understand it to be?

A. I understand it to be a pamphlet.

Q. Is this the official organ or bulletin of the National Credit Men's Association?

A. I don't know whether the official organ or not.

Q. You receive it every month?

A. Some months I do and some I don't.

Q. I will ask you whether this is intended to describe and express and contain a digest and account of the doings and affairs of the National Credit Men's Association?

A. I don't know.

538 Mr. Robertson: Object to that.

The Court: Objection sustained.

Q. I will ask you if your firm have been contributing largely to the prosecution of the Badders business and has the National Association contributed out of its prosecution fund in this case?

A. I said last night—

Mr. Robertson: I object to that as assuming—



The Court: I don't care what he assumes.

Mr. Robertson: Objected to as not cross examination and assuming a state of facts not in evidence.

The Court: The objection is sustained.

Mr. McKeever: Except.

Q. Do you know Mr. J. H. Trego?

A. I believe I have heard that name before. I believe he is secretary.

Q. Secretary Treasurer of the National Association of Credit men, isn't he?

A. I think he is.

Q. And the publisher of this bulletin?

A. If his name is there I suppose he is.

Q. In the articles and editorials of this Bulletin I will ask you to state if he represents the National Association of Credit men?

A. I don't know.

Q. You say you do receive this Bulletin?

A. I said some months I receive it and some months I do not.

Q. And it is the Bulletin of the National Association of Credit Men?

A. It says on the cover what it is.

Mr. McKeever: I desire to offer in evidence part of page 803 of this Bulletin.

Mr. Robertson: Objected to as not cross examination, and no foundation laid, incompetent.

The Court: Objection sustained.

Mr. McKeever: Except.

539 Q. I want to know and I want to ask the question direct, if your firm, or you, have contributed directly or indirectly to any fund to prosecute this case against the officers of the Badders Company?

A. We contributed money in the bankruptcy matter, to locate missing property and to find Mr. Badders, who had skipped.

Q. Will you answer my question, read the question.

Question read.

A. I make the same answer, we contributed money to locate missing property and to find out where Mr. Badders was, he couldn't be located, he couldn't be found, and he was not present in Topeka when the trial in bankruptcy was had.

Mr. McKeever: I want to move to strike out the voluntary remarks of the witness in response to that answer and ask the court require him to answer the question.

The Court: I think he has answered your question.

Mr. McKeever: Except.

Q. To whom did you give this money?

Mr. Robertson: Object to that.

The Court: Answer.

A. We sent the check to Messrs. Wheeler and Switzer.

Q. Did you send a check to McClintock and Quant?

A. We did not.

Q. Send a check to anybody else?

A. No sir.

Q. How much did you send to McClintock and Quant?

A. No, nothing sent to McClintock and Quant, check sent to Wheeler and Switzer and payable to their order.

Q. Do you receive anything in the way of compensation for attending this trial and assisting in the prosecution?

A. One dollar and a half a day and my mileage.

Q. Receive anything from the Credit Men's Association?

A. Absolutely not.

Q. Are you an attorney?

A. I practiced law before I became credit man and manager for my present concern.

Q. You stated you gave five per cent of your claim to Wheeler and Switzer and I will ask you to state how much that amounted to, the total of it?

540 Q. The check I believe was ninety nine dollars.

Q. And did you turn over to them certain evidence that you had?

A. No sir.

Q. You didn't turn over any papers or evidence or documents of any kind?

A. No, sent them a proof of claim and power of attorney to be filed in the bankruptcy matter.

Q. Have you had any communication with Mr. Lindland the postoffice inspector in this case?

A. No sir.

Q. Talked with him about the case before you came here?

A. I have talked with him.

Q. Since or before?

A. Before.

Q. Where was it?

A. He visited me in my office in Chicago.

Q. Did you talk with him in Topeka?

A. No sir.

Q. Never had any talk with him until he came to your office in Chicago or you came down here?

A. That is it.

Mr. McKeever: Now I think we have a right, Your Honor, to have my question answered that I asked him direct?

The Court: What is your question?

Mr. McKeever: The question is this: Did not the National Credit Men's Association, of which you are a member, raise a fund for the purpose of prosecuting the members or a member of the Badders firm and turn that money over to some person?

The Court: If you know?

A. I don't know, in the way that he has asked the question I must say I don't know.

The Court: You have answered the question, you don't know.

Re-redirect examination.

Questions by Mr. Robertson:

541 The Court: You going to commence all over with this man?

Mr. Robertson: Just one question.

Mr. McKeever: Your Honor, there is one thing I want to ask a little further.

Q. You filed an affidavit in this case here yesterday, did you not Mr. Spiesberger?

A. I did.

Q. And in that you have stated you have with you and in your possession certain papers and correspondence in connection with this case?

A. Yes.

Q. Have you got them with you now?

A. Yes.

Q. Can you turn them over to us?

A. If I am ordered to.

Mr. Robertson: That is all unnecessary and certainly made for prejudicial purposes and I object to it.

The Court: I will rule the question. He says he has certain papers, and if you want them produced you know how to get them produced.

Mr. McKeever: You will deliver them to us, will you Mr. Spiesberger.

The Court: If you want the papers you can compel them, don't stop here to debate.

Mr. Robertson: Pure pettifogging.

The Court: I will not permit that; I am not trying this case as between these lawyers; I am trying this case between the United States on the one side and the defendant on the other, and if counsel will avoid this talk back and forth about each other we will get along better in this case, and if we have to try any of you hereafter we will make a separate trial of it and go at it in that way.

Questions by Mr. Robertson:

Q. Mr. Spiesberger in what capacity if you know did Mr. Lindland come to you in Chicago?

542 A. As an inspector for the Department of Justice, I understood he was an investigator or inspector.

Q. A representative of the government?

A. Yes.

(Witness excused.)

GEORGE GUGGENHEIM, called as a witness on behalf of the plaintiff, having been first duly sworn, testifies, as follows:

Direct examination.

Questions by Mr. Robertson:

Q. What is your name?

A. George C. Guggenheim.

Q. Where do you live Mr. Guggenheim?

A. Rochester, New York.

Q. What is your business?

A. I am general manager of the Stein-Bloch Company.

Q. Who and what is the Stein-Bloch Company?

A. What is that?

Q. Who and what is the Stein-Bloch Company?

A. The Stein-Bloch Company are a New York State corporation engaged in manufacturing of clothing sold at wholesale.

Q. What is the capital stock?

A. The capital stock is two million dollars.

Q. What volume of business do they transact during the course of the business year?

A. Between three and one-half and four million dollars.

Q. Are you acquainted with the defendant, George S. Badders?

A. Yes sir.

Mr. Robertson: If Your Honor please, I cannot run in opposition to this conversation that is going on here very well and I object to it.

The Court: It is hardly necessary for me to say to the members of the bar, who have been practicing here for many years, that the amenities of the profession would require proper and reasonable respect for opposing counsel, so that they may not be disturbed by any conversations in the examination of witnesses.

Mr. Harkless: We will ask permission to remain silent.

543 The Court: That is unnecessary, sir, and I have had just as much of this from you as I want to hear in the course of this trial. Proceed, sir.

Q. You say you are acquainted with the defendant Mr. Geo. S. Badders?

A. Yes sir.

Q. How long have you known him?

A. I met Mr. Badders for the first time in the fall of 1911.

Q. Whereabouts?

A. I met him at Topeka, Kansas.

Q. Are you acquainted with the corporation that was doing business out there at Topeka known as the Badders Clothing Company?

A. Yes.

Q. Did you know of it under the previous name of the Marshall Clothing Company?

A. I am not acquainted at all with their affairs.

Q. Has your firm, the Stein-Bloch Company, had business relations with the Badders Clothing Company?

A. Yes sir.

Q. When did such relations commence Mr. Guggenheim?

A. We shipped the Badders Clothing Company their first goods in February, 1912.

Q. Do you know Mr. I. J. Frankenstein?

A. Yes sir.

Q. Where does he live now?

A. In Hillsdale, Mich.

Q. Was he at that time living in Topeka?

A. No sir. What time do you mean Mr. Robertson?

Q. At the time you opened business relations with the Badders Clothing Company?

A. Yes sir.

Q. He was then living in Topeka?

A. He had removed to Topeka, Kansas.

Q. Wish you would explain briefly to the jury how your business relations began with the Badders Company?

A. In the fall of 1911 when I was in the west I received  
544 a wire from my concern instructing me to go to Topeka, Kansas, where I would meet Mr. Frankenstein at the National Hotel. When I reached Topeka I found a letter from my house telling me Mr. Frankenstein and Mr. Badders, whom I met, I believe for the first time then, were interested in buying the Marshall Clothing Company. They wanted me to look through the stock and see what I thought was its value. I looked through the stock, had a talk with Mr. Andrews, who I believe was the owner of it, and I came back and advised the two boys not to undertake it; I thought the stock was too large to be handled, and I didn't advise them going in. Before I had gone over the stock Mr. Badders told me who he was, told me that I could ascertain as to his character and ability through Mr. Mulvane of the Topeka Bank. I saw Mr. Mulvane. Mr. Mulvane spoke very highly of Mr. Badders, and then I went back and went ahead with negotiations. When I left Topeka it had been decided that they would not buy that stock. I had made the remark, that I would rather see you boys get this store with the fixtures and the lease rather than with the stock, I don't think you can handle the stock. And with that I left Topeka and dropped the matter. Some months afterwards Mr. Badders came to Rochester. Shortly after that I read in what is called the Trade Records, newspaper published by the trade, that George S. Badders was running a sale of the Robinson & Marshall stock. I paid no attention to it because not interested. Mr. Badders came to Rochester some time after that and reminded us of the remark that I had made in Topeka with reference to the empty store lease and said that he had run that sale successfully, had no debts, had some money, and he wanted to go into the business. Now I don't know what negotiations were had or how he met with Mr. Frankenstein again or whatever arrangements he made with Mr. Frankenstein: I simply know they went into the clothing business together; that

we agreed to sell them clothing: that Mr. Frankenstein was to put in a certain amount of money, my recollection is he told me he didn't have the money available because he had his business at Hillsdale, and had a house to sell, and wanted us to loan him seventy-five hundred dollars, and as security he would give us seventy five  
 545 shares of stock in the Badders Clothing Company until he could turn himself or get his money out of the Hillsdale investment, and we agreed to that; but whatever arrangement Mr. Frankenstein and Mr. Badders had together we didn't enter into and know nothing of it. That was the condition, to my recollection, that prevailed on the first of February, 1912, when we made the first shipment.

Q. Mr. Guggenheim at that time did your house have a traveller who was a brother of this Mr. I. J. Frankenstein?

A. Yes sir, Mr. Harry Frankenstein.

Q. You knew this Mr. I. J. Frankenstein, or knew who he was?

A. I simply knew who he was, I met him seldom during his business connections with the house.

Q. I will ask you what your duties consist of, very briefly?

A. I have been connected with the Stein-Bloch Company for thirty four years and during that time I have built up a sort of general work, nothing in particular, but everything in general.

Q. You look after the customers generally over the country, do you?

A. Yes sir.

Q. How many customers do you usually have in one city?

A. Very seldom more than one.

Q. Had you theretofore had an account in Topeka?

A. We had sold Topeka but not very largely.

Q. After establishing these relations with the Badders Clothing Company did you sell them exclusively in Topeka?

A. Yes sir.

Q. Now if you can, Mr. Guggenheim, without my asking you questions, detail your relations with the Badders Clothing Company and Mr. Badders from this on. I would be glad if you would do so?

A. During 1912 there was nothing of any consequence that occurred that would charge my memory with our transactions with that house.

Q. Just a moment; did you continue selling them goods along during 1912?

A. Yes sir, we sell goods to our customers twice during the  
 546 years, they buy in bulk.

Q. Explain how goods are bought?

A. Along in the month of October or November we sell our spring goods for the spring of the next year; those are sold with a showing of samples.

Q. By a travelling man?

A. By a travelling man or shown at sample rooms in various cities; those goods are shipped to the purchasers during the succeeding six months; for the fall season we sell our goods in March

or early April, and those goods are shipped during the succeeding six months.

Q. May I ask you right here if this Topeka territory was in the territory of your traveller Mr. Frankenstein who was the brother of I. J. Frankenstein?

A. Mr. Frankenstein travels throughout Kansas. During 1912 I do not recollect having been in Topeka. I may have been in Topeka, if I was nothing, nothing happened that I would remember.

Q. When do you remember of calling in Topeka?

A. During the year 1912 we shipped the Badders Clothing Company between eighteen and nineteen thousand dollars' worth of goods, and during the year 1912 they paid us no money whatsoever. The third season we were to do business with them would practically open in February, 1913. On account of their not having paid us any money I came to Topeka. I saw Mr. Frankenstein and Mr. Badders. They showed me the statement of their business, to my recollection, to the first of the year, showing that during the preceding year they had lost about one thousand dollars in their business. They stated that they had discounted all bills excepting the Stein-Bloch Company, we were practically their only creditor. I told them at that time they didn't have enough of capital; they had twenty five thousand dollars' worth of capital, and doing a business of about ninety thousand dollars, that is to the best of my recollection. I told them they ought to put ten thousand dollars more in the business; that they should not borrow that money, but they should get added capital, an increase of stock. That they ought to pay us ten thousand dollars. There was some talk then of

547 Mr. Frankenstein selling out to Mr. Badders, or Mr. Badders may have suggested that he might sell out, I don't recollect it.

At any rate I laid this proposition before them: They were to increase their capital stock in the sum of ten thousand dollars; that was to be an actual increase of stock; they was to pay us ten thousand dollars; and the seventy five hundred dollars which Mr. Frankenstein owed us and none of which had been paid, that if Mr. Badders purchased Mr. Frankenstein's interest, that we would transfer that loan to Mr. Badders. That one note was to be dated three months from that time, the other six, and the other twelve; that Mr. Frankenstein was to endorse the last note. The security that we would ask would be the same security that we had from Mr. Frankenstein, a deposit of seventy five shares of the Badders Company. That payments of one hundred dollars a month was to be made on those notes. That was done. In March Mr. Badders sent us the notes, sent us the stock, paid us the ten thousand dollars less the cash discount which we allowed him on the ten thousand dollars, although the bills were way over due. We shipped him about three thousand dollars that season more or less.

Q. What season was that?

A. That was the spring season of 1914.

Q. You mean 1914 or '13?

A. The spring season of 1913. In May we received a letter from Mr. Badders telling us—

Mr. Harkless: Object to that statement; the letter is the best evidence.

Q. Do you have that letter Mr. Guggenheim?

A. The letter is in evidence, letter dated May 29th.

Q. I call your attention to a letter marked Exhibit No. 30, which I believe was identified by the witness Burdick, and ask you if that is the letter to which you refer?

A. Yes sir.

Mr. Robertson: Offer Exhibit No. 30 in evidence.

A. Shall I read the letter?

548 Q. Yes, you may read the letter.

Mr. Hite: Let me see it please. There seems to be another paper referred to here Mr. Robertson; do you offer it in connection with that; we think all the communication should be offered or none of it, Your Honor.

The Court: What have you to say in reference to the suggestion made by counsel on the other side, as to a paper being referred to in that letter that ought to be connected with the letter?

Mr. Hite: You can see what he says there.

Mr. Robertson:

Q. Mr. Guggenheim, in Exhibit No. 30 reference is made to an enclosure; do you have the enclosure?

A. The enclosure was offered in evidence at the bankruptcy proceeding.

Mr. Hite: We object to the references made by the witness to bankruptcy proceedings.

The Court: You need not mind about it, if you have not the letter say so. Have you got the enclosed list spoken of there.

Mr. Robertson: I have not, Your Honor.

The Court: I think the whole paper ought to be offered, whatever was contained there, or referred to there, it ought to be produced.

Mr. Robertson: I will endeavor to find it. I have never seen it.

Q. Well, at any rate you heard from Mr. Badders?

A. Yes sir.

Q. And what occurred from that on Mr. Guggenheim.

A. In July Mr. Badders, at least we received from the Badders Clothing Company, a thousand dollars; that was the next payment. In June we had received a letter from them asking us to—

Mr. Hite: Object—

The Court: If you have the letter, let's have the letter; don't state the contents. The letter itself is the best evidence of what it contains.

549 Q. Have you the June letter Mr. Guggenheim?

A. Yes sir.

Q. Got it with you?

A. I have it with me.



Q. Without stating what was in it go ahead and state what occurred?

A. The Badders Clothing Company requested us to cancel a tion of their fall order.

The Court: State what occurred; that may be stricken out if requested it in a letter and you have not produced the letter, it be stricken out of the record.

A. The Badders Clothing Company requested us to cancel a tion of the fall order——

The Court: Mr. Witness, you will understand whatever was writing, the writing itself is the best evidence and the writing it must be produced or accounted for before you can state the contents of it.

A. Their fall order was, if I recollect, was about eight thousand dollars; we shipped them but three.

Q. You shipped them but three thousand?

A. Three thousand, more or less. In September Mr. R. S. Graham who stated——

Q. Just pardon me; let me correct you on the initials of Mr. Graham.

The Court: Well, did you see Mr. Graham?

A. Yes sir.

Mr. Hite: If Your Honor please, we shall object to the witness testifying as to what Mr. Graham said to him unless the defendant was present.

The Court: The Court will require that to be done.

Mr. Robertson: As to what Mr. Graham said to you will be hearsay.

A. Well, I came to Topeka in October, 1913, at the suggestion of Mr. Graham.

The Court: Well you came here; did you see Mr. Badders when you got here?

550 A. Yes sir. I came here in October, 1913 and had a talk with Mr. Badders with reference to their account occasioned by the fact that I understood that Mr. Badders wanted——

Mr. Hite: Object——

The Court: Did you state that to Mr. Badders?

A. Mr. Badders told me he wanted to subdivide his store, that he wanted to rent the outer, as I understand, the south half of the store, to which I objected because it would leave the inner store dark. I asked Mr. Badders if he could give us any security. Said he couldn't. I asked him if he would give us the lease as security. He objected to that. I finally outlined a plan with him for the extension of our account and drew up a contract which is here.

Q. I hand you a paper already marked Exhibit No. 35 and ask you if that is the paper to which you refer?

A. Yes sir.

Mr. Robertson: Offer Exhibit No. 35 in evidence.

The Court: By whom is it signed.

Mr. Robertson: The signature has been identified. George S. Badders, already by Mr. Burdick.

Mr. Robertson, reading Exhibit No. 35.

(A copy of Exhibit No. 35 is attached hereto and made a part hereof.)

Q. I wish you would explain to the jury, briefly, what brought about the making of this contract? Exhibit No. 35.

Mr. Hite: Object to that Your Honor unless it is to be conversation between the witness—

The Court: I suppose all the conversation and all the agreements were settled in that writing when it was executed, and for that reason any conversation that took place that lead up to it is not necessary; the paper speaks for itself.

Q. What was the financial condition as between the Stein-Bloch Company and the Badders Clothing Company, and also the Stein-Bloch Company and Mr. Badders personally, if you know, November 8, 1913?

A. The Badders Clothing Company—

551 Mr. Hite: I am not objecting—

The Court: I suppose what you are trying to get at is to get at how much the company and Mr. Badders owed this concern?

Mr. Robertson: How much they owed this company at that particular time, if you know?

A. Yes sir.

Q. State it?

A. The company owed the Stein-Bloch Company between thirteen and fourteen thousand dollars; Mr. Badders owed the company sixty eight hundred dollars at that time.

Mr. Hite: Would you be good enough to repeat those figures?

A. The Badders Company owed the Stein-Bloch Company between thirteen and fourteen thousand dollars, and Mr. Badders owed the Stein-Bloch Company sixty-eight hundred dollars. Of the sixty eight hundred dollars, twenty five hundred dollars was endorsed by Mr. Frankenstein.

Q. Now, after the 8th of November, 1913, and after Exhibit No. 35 was entered into, what payments, if any, were made to you by either the Badders Clothing Company or Mr. Badders personally?

A. The Badders Clothing Company paid the Stein-Bloch Company twenty five hundred dollars about the tenth of November; they paid us eighteen hundred and some dollars about the first or the second of January, 1914, the first week of January.

Q. In Exhibit No. 35 I call your attention to a stipulation that \$3,361.81 will be paid on or before December 20, 1913. Was that paid Mr. Guggenheim?

Mr. Hite: We think the witness has stated what was paid.

The Court: Have you stated all the payments that were made upon that indebtedness?

A. Yes sir.

The Court: That covers it.

Q. I hand you a paper that has been identified and marked Exhibit No. 34 and ask you to state from whom, if you know, that was received by your house, if it was so received?

A. Yes sir. This check was sent to us by the Badders 552 Clothing Company.

Mr. Hite: If Your Honor please, if it was sent by mail, in a letter, we think the letter should be produced.

The Court: What is this you are talking about.

(Handing Exhibit to the court.)

The Court: Go on and ask about the check.

Mr. Hite: Except.

Q. Did you come out to Topeka in December, 1913?

A. Yes sir.

Q. What was the occasion?

A. There was a payment due——

Mr. Hite: We object to the occasion being stated unless there was some conversation.

The Court: Well what did you do after you got there with Mr. Badders?

A. I saw Mr. Badders the Monday after Christmas in December; I asked Mr. Badders to make the payment that was due on the contract, which was \$3,366.21; Mr. Badders stated that a check had been sent to Rochester; the check reached me at Topeka on the following day.

Q. What did you do with the check?

A. I presented the check to the bank on which it was drawn, the president of the bank.

Q. Was this that Exhibit No. 34?

A. No sir, that is a duplicate of it.

Q. Go ahead and explain all about that?

A. I presented that check to Mr. Mueller, President of the Bank and he informed me——

The Court: State whether the check was paid or not?

A. The check was not paid.

Mr. Robertson: I understood you to remark Exhibit No. 34 is not the check that was sent you by mail?

A. Not the first check.

Q. Do you have in your possession that first check?

A. I returned that to Mr. Badders.

The Court: You returned the original check to Mr. Badders?

553 A. Yes sir.

The Court: How did you get this duplicate?

A. Mr. Badders informed me after the check had been refused payment, Mr. Badders informed me another check was sent to Stein-Bloch Company, and if that came back in the regular course of busi-

ness, through the clearing house, it would be paid, and the second check reached me.

The Court: Is that the one?

A. Yes sir.

Q. Did you have a talk with Mr. Badders about this second check, Exhibit No. 34?

A. Yes sir.

Q. Tell what happened.

A. Mr. Badders informed me that check not having come through the clearing house in the regular course of business he would not pay it.

The Court: Did you present that check to the bank?

A. Yes sir I presented that check to the bank.

The Court: And payment was refused?

A. I was informed his bank account—

The Court: You need not state what you were informed. State whether you presented the check to the bank and payment refused?

A. I presented the check to the bank and payment was refused.

Mr. Robertson: Offer Exhibit No. 34 in evidence.

The Court: Read it.

Mr. Robertson, reading Exhibit No. 34.

(A copy of Exhibit No. 34 is attached hereto and made a part hereof.)

Q. I observe Mr. Guggenheim that the name of the month has been cut out of this check, apparently by a machine of some sort; I call your attention to that and ask you to state, if you know, what month was inserted there?

A. December.

Q. Wish you would go ahead and state briefly what further, if anything, occurred between you and Mr. Badders about this matter?

Mr. Hite: I didn't get that question.

554 The Court: Wanted to know what conversation occurred between Mr. Badders and himself subsequent to the refusal of payment of this check?

A. I had a number of talks with Mr. Badders and I offered him, I was not satisfied with the condition of the store, the sale was going on, and I offered to sell our account to him for ten per cent discount. He told me he was perfectly solvent and going to pay one hundred cents on the dollar. I asked him to make us a statement and he put me off from day to day and finally he said he couldn't make a statement because he couldn't get in touch with some of the officers of the company. I asked him what his assets were, roughly; said they were worth ninety thousand dollars, his liabilities were about forty three thousand. I said you must have a large amount of cash on hand. He told me that the sales had been thirty eight thousand dollars, and finally—

Q. How much did you say Mr. Guggenheim?

A. Thirty eight thousand dollars, to the best of my recollection, at least at the time I talked to him about the sales that is what he

told me they were. He asked me if I would be satisfied with a check if I recollect right, about fifteen hundred dollars, and I said I would. He gave me a check for something over eighteen hundred dollars, left town and went to Kansas City, and after thinking over his ninety thousand dollar statement as to his assets, reached the conclusion that I couldn't see it, and I came back again the next day. He told me his assets were seventy thousand dollars, that he made some mistake with reference to the increase of capital stock, that it was confusing, that his assets were seventy thousand dollars.

The Court: Well, that was after the fifteen hundred dollars was paid?

A. After that time.

Q. What time was that fifteen hundred paid?

A. First week in January.

Q. First week in January; that is one of the accounts you stated had not been paid?

A. Yes.

555 Q. One of the two accounts?

A. Yes sir.

Mr. Hite: The Court is mistaken as to the amount.

The Court: Well, eighteen hundred; it was one of the two you stated a while ago had been paid on your account?

A. Yes sir.

Mr. Robertson:

Q. Now, Mr. Guggenheim, calling your attention to Exhibit No. 35, to what is designated here as the first payment of five hundred dollars to be made January 15, 1914, and ask you whether that was paid?

A. No sir.

The Court: He says none of it was paid; no use in repeating question after question and getting the same answer from this witness here in reference to the matter; he has stated the amount in that paper due his house, and he has stated to the jury the two payments that were made and says they are all that was made.

Mr. Robertson:

Q. Were there any payments made you outside of those provided for in this contract thereafter?

A. None whatsoever.

Q. After you returned from Kansas City what if anything further occurred between you and Mr. Badders when you returned from Kansas City to Topeka?

A. Why that was the January visit. Mr. Badders made that statement to me and I left for Rochester on the following Sunday.

Q. Do you recall a visit of Mr. Badders and Mr. S. R. Boyd to Rochester in November, 1913?

A. Yes sir.

Q. How many times were they there?

A. Twice.

Q. Wish you would just tell the jury what was said and what occurred between you and Mr. Badders upon that occasion?

A. Mr. Badders and Mr. Boyd came to our factory on either the 17th or 18th of November; on that morning Mr. Badders said he wanted to have a talk with me. I was busy. I asked Mr. Badders how long he was going to stay in Rochester, and he said he was going to New York that night. I told him I was going to New York the same evening and would talk with him on the train. I had breakfast with him the following morning and made an appointment to come to our office in New York and have a talk. He came there and told me his visit to the east was for the purpose of buying goods for a sale that he wanted to put on early in December. Told me that his principal competitor, Auerbach & Guettel put on a sale about the eighth of December and he wanted to get his sale ahead of theirs. He wanted to buy cheap goods, nothing higher than ten dollars. I asked him how much he wanted to buy; said he could use about ten thousand dollars' worth of goods. I said, can you handle that amount of goods successfully; yes, he said, I can, and make a profit. I said, if you think you can, go ahead. He says, I can't handle any of your goods because they are too high priced. I said, I know it. I asked him if he was going to buy any goods of Michael Stern & Company, and he said no, Mr. Graham would attend to that. He said he could use a few stout suits. I told him I had nothing I could sell at a discount, and he wanted about twenty suits and I promised to select them for him and I did. He said he could use some overcoats, described them, and gave me an order for about twenty two hundred overcoats and the prices he was willing to pay, and I afterwards decided he could not handle them successfully in his sale and I did not ship them to him. The next I heard from Mr. Badders was on the following Sunday, got a phone message to come to the hotel he wanted to see me. I went there and met him and Mr. Boyd; they told me they had been buying goods in New York and having some trouble; that they had decided to go through the market in the various houses and buy orders in excess of their requirements and then at the end of the week to assemble their samples and cut their orders down to what they were going to use; that they found they had awakened suspicion in the market and wanted to tell me about it before I heard it from outside sources, and I said, give me a list of your purchases.

557 Q. I hand you paper marked Exhibit No. 53 and ask you to state if that is the list which Mr. Badders gave you?

A. This is a copy of the list, yes sir.

Mr. Hite: We ask that the original be produced or accounted for.

Mr. Robertson:

Q. Where is the original, if you know?

A. The original was simply a pencil memoranda of my own, which I dictated to the stenographer; this is *at* it comes from the stenographer.

Q. Have you the original notes?

A. I destroyed the original notes at the time this was made out.

Mr. Hite: Your Honor, May the defendant briefly cross examine the witness in reference to this paper before it is offered?

The Court: Yes. Let me see the paper.

The Court: Did you have a talk with him about the persons from whom he had made purchases?

A. Yes sir.

Q. Did he state to you the persons from whom he purchased?

A. Yes sir.

Q. And the amount of purchases in conversation there in Rochester, New York?

A. Yes sir.

Q. And then during that conversation did you take a memoranda of the amounts?

A. Yes sir.

Q. And the memoranda that you had of the amounts was taken from his verbal statement to you?

A. Yes sir.

Q. As to what he had purchased?

A. Yes sir.

Q. Did you put down on your memoranda the correct amounts given by him as the purchases and from whom he had made them?

A. Yes sir, as he stated them.

Q. As he stated them; on looking at that paper, that you say is a copy of the one there, you may refresh your memory and state what he said to you, if anything, in reference to who he bought  
558 from?

Mr. Hite: May the defendant be permitted to ask the witness a question?

The Court: Yes.

Mr. Hite:

Q. Mr. Guggenheim, did you not receive a letter from the Badders Clothing Company giving you a list of the purchases made in New York?

A. Some days after this, when we found this list incorrect.

Q. You got a letter, however, making the statement by the Badders Clothing Company of those purchases?

A. Yes sir.

Q. Where is that letter?

A. It is in evidence.

Q. It is in evidence?

A. Yes sir.

The Court: We will not go into that matter; we have a matter on hand here; talk about that later. What you are trying to find out is what Mr. Badders stated to you in this conversation at Rochester, New York; that is what we are trying to find out.

Mr. Hite: I want to find out if this list here referred to is not the list that was in this letter. Your Honor, will you allow us an objection and exception to the testimony of the witness as to this list, on the ground it is incompetent, irrelevant and immaterial and hearsay?

The Court: Yes. I have asked this witness if he by inspection of this paper can recall the conversation between him and Mr. Badders?

A. I can.

Q. And if so, whether he can now state what Mr. Badders told him at Rochester, New York. Can you?

A. Yes sir.

Q. You may state it, and I will allow your objection and the exception.

A. On November 23rd, on Sunday morning, Mr. Badders and Mr. Boyd reported to me in reply to my inquiry as to how much goods that had been purchased——

559 Mr. Hite: I ask that the witness be not allowed to state what Mr. Boyd stated.

The Court: Unless in the presence of Mr. Badders and he assented to it. State what you said to Mr. Badders?

A. Mr. Badders stated to me that he had purchased at Rochester from A. Dinkelspiel Co. seven hundred dollars; Goldwater Bros. three hundred dollars; from H. Hershberg & Co. five hundred and sixty dollars; from Solomon Bros. nine hundred dollars; from Rosenberg Bros. eleven hundred dollars; L. Black & Co. four hundred and eighty dollars; Sloan & Levy; two hundred dollars. In New York he had purchased from Jacob Cohn & Co. eight hundred dollars; from Brosser Bros. twelve hundred dollars; Leiptz Bros. two thousand dollars; from Robt. Kamber twelve hundred dollars; from Spiro Michael Company fourteen hundred dollars. His purchases at Chicago had been nominal. That he had purchased most of these goods on thirty days' dating; he said these were the orders that were bona fide.

The Court: What was the date of that conversation?

A. On November 23.

Q. 1913?

A. Yes sir. 1913.

Mr. Robertson:

Q. Counsel asked you if you did not receive a subsequent list of people from whom the Badders Company had made purchases and had dealings?

A. Yes sir.

Q. I hand you Exhibit No. 54 and ask you if that is the paper referred to?

A. This is a paper that we received on November 29th from the Badders Clothing Company giving a list.

Mr. Hite: Never mind what it gave please.

A. It has no signature.

The Court: Who is it signed by?

Mr. Robertson: Did you ever talk to Mr. Badders about that Exhibit No. 54 you have in your hand?

A. No sir, we wrote him in reference to it.



Q. Have you ever discussed this with Mr. Badders in any way, this exhibit?

560 A. No sir.

Q. Is this Exhibit No. 54 the list counsel asked you about in cross examination?

A. Yes sir.

Mr. Robertson: I believe it would be proper to introduce it. I offer it in evidence. Exhibit No. 54.

The Court: Counsel has asked him if he did not get another list; if that is the list you may introduce it, counsel having asked for the information and obtained it.

Mr. Robertson reading Exhibit No. 54.

(Copies of Exhibits Nos. 53 and 54 are attached hereto and made a part hereof.)

Q. I hand you a paper marked Exhibit No. 55; state if you know whether the Stein-Bloch Company received that or not?

A. Yes sir, we did.

Q. From whom Mr. Guggenheim?

A. The Badders Clothing Company, November 28, 1913.

Q. I will ask you in what way, whether by mail or by telegraph?

A. By telegraph.

Mr. Robertson: Offer in Evidence Exhibit No. 55. Reading same.

(A copy of Exhibit No. 55 is attached hereto and made a part hereof.)

Q. Now I will ask you to state if you know whether the list Exhibit No. 54 is the one referred to in this telegram, Exhibit No. 55?

A. To the best of my knowledge.

Q. And previous to the reception of this Exhibit No. 55 by your house, state, if you know, whether you- house had communicated to Mr. Badders?

A. Yes sir.

Q. I now hand you a paper marked Exhibit No. 56 and ask you — state if you know whether that was received by your house through the regular course of the United States mail, do you know personally?

A. Yes sir.

Q. Did you receive it yourself Mr. Guggenheim?

561 A. I received it with the regular mail; I am in the office when the mail is opened.

Mr. Robertson: We offer Exhibit No. 56 in evidence.

The Court: Show it to counsel. Read the paper.

Mr. Robertson, reading exhibit No. 56.

(A copy of Exhibit No. 56 is attached hereto and made a part hereof.)

Q. Now what if anything further happened between you and Mr. Badders that day in Rochester?

A. Nothing.

Q. Do you know whether he left Rochester that Sunday?

A. I didn't see him on Monday.

Q. Didn't see him there again?

A. Didn't see him after that time.

Q. When did you see him after that?

A. Oh I saw him the Monday following Christmas in Topeka.

Q. Now Mr. Guggenheim, prior to December 1913 had you been keeping in touch with the business of the Badders Clothing Company by any sort of reports?

A. Yes.

Q. In what manner, if you can explain, without stating anything that is in the reports?

A. The Badders Clothing Company were to send us daily reports of their business.

Q. Beginning when?

A. I don't know exactly when, but we received them all during 1913.

Q. During the entire year of 1913?

A. No.

Q. When did they cease, if they did?

A. They stopped coming regularly in November.

Q. Upon failing to receive the daily reports did you communicate with the Badders Company?

A. Yes sir.

Q. I call your attention to Exhibit No. 29 which has been identified here as containing the signature of Mr. Badders and ask you if you received that from him?

A. Yes sir.

562 Mr. Robertson: Offer Exhibit No. 29 in evidence. Reading Exhibit No. 29.

(A copy of Exhibit No. 29 is attached hereto and made a part hereof.)

Q. Did you ever get those daily reports?

A. No sir, got no reports for December.

Q. Did you get any reports for January 1914?

A. No sir.

The Court: Gentlemen, you may take a recess of about ten minutes.

(After Recess.)

Mr. Robertson: If Your Honor please, Mr. Robert Stone of Topeka, who is Speaker of the Kansas House of Representatives, which body is now in session, is present, and with Your Honor's permission would like at this juncture to introduce Mr. Stone that he may go back to his responsibilities in Topeka.

The Court: The court thinks that is proper and allowable.

ROBERT STONE, called as a witness on behalf of the plaintiff, having been first duly sworn, testifies, as follows:

Direct examination.

Questions by Mr. Robertson:

Q. What is your name?

A. Robert Stone.

Q. What official position, if any, do you hold in Kansas at this time?

A. Speaker of the House of Representatives.

Q. And is the Legislature at this time in session?

A. It is.

Q. What is your business Mr. Stone?

A. Lawyer.

Q. How long have you been a lawyer?

A. Since 1892 I believe I was admitted.

Q. Where do you live?

A. Topeka.

563 Q. How long have you lived in Topeka?

A. Since 1866.

Q. You born there?

A. I was born there.

The Court: Do you claim any particular credit for that?

A. Rather hard on the state.

The Court: Go on and ask what you want.

Mr. Robertson:

Q. Are you acquainted with the defendant George S. Badders?

A. Yes sir.

Q. How long have you known him Mr. Stone?

A. About fifteen years I should think.

Q. Were you acquainted with a corporation with which the defendant was connected prior to January 30, 1914, known as the Badders Clothing Company?

A. Yes sir.

Q. Were you ever an attorney for Mr. Badders?

A. I was.

Q. Did you ever actually hold a share of stock or any shares of stock in the Badders Clothing Company?

A. I'm not sure about that, I think not. I held a share of stock in the Marshall Clothing Company which was the predecessor of the Badders Company; that is, I was a nominal holder of the stock, I never purchased any stock in the company.

Q. Were you at any times in the months of November and December of 1913 a director of the Badders Clothing Company?

A. I didn't understand myself to be such, if I was elected it was without my knowledge.

Q. Did you ever take the oath of office as director for that period of time?

A. I did not, no sir. I was a director of the Marshall Clothing

Company when it was turned over to Mr. Badders; I was elected a director for the unexpired term of Jno. J. Schenck, retired.

Q. When would that term expire?

A. That term expired in January 1913 I think, I am not  
564 quite sure, January 13 or 12.

Q. I will ask you to state whether any time subsequent to the first day of May, 1913, you were a stockholder in the Badders Clothing Company?

A. No sir I was not.

Q. Were you at any time subsequent to May the first, 1913, a director in the Badders Clothing Company?

A. Not to my knowledge. I never took the oath of office with that company.

Q. You could not be a director without being a stockholder could you Mr. Stone?

A. Unless no one had been elected as my successor of the Marshall Clothing Company, that is the only way in which I could have been a director of the Badders Company; it was the same corporation with a changed name.

Q. What I want to know now is whether in the months of November and December, whether you knew yourself to be a director of this corporation?

A. No sir, I did not.

Q. Do you at this time hold any stock of the capital of the Badders Company?

A. No sir I do not.

Q. Do you recall ever assigning any such stock to Mr. Badders or any one else?

A. I did.

Q. When did that occur?

A. It was either immediately after the purchase of the stock in November 1911, or in February 1912, when the stock was reduced and the name of the corporation was changed from the Marshall Clothing Company to the Badders Company, I assigned the single share of stock back to Mr. Badders.

Q. Did you thereafter ever become the owner of any of the capital stock of that corporation?

A. No sir, I did not.

Q. When Mr. Stone did you last represent Mr. Badders as his attorney, if you remember?

A. Do you mean personally, or the corporation?

565 Q. Well now either way?

A. In the fall of 1913.

Q. About what time?

A. In September 1913, in October 1913, I wrote him and also told him personally that I did not desire to represent him any longer. There was still a case pending at that time, three or four cases pending, one against himself personally, and another against the company, as I remember, in which I had appeared as attorney; I did not withdraw from those cases at that time, but wrote him about a month later that I was still——

Mr. Hite: We think, Your Honor, we object on the ground of privilege as to any communication between attorney and client.

The Court: You propose to ask the witness a question of anything that occurred after he ceased to be the attorney of the defendant?

Mr. Robertson: Yes, sir.

Q. Did you thereafter have a conversation with Mr. Badders and if so, when?

A. The twenty second or twenty third of December, 1913.

The Court: Were you then his attorney?

A. He consulted me about some of his matters on that day.

Mr. Robertson: Did you, as a result of that consultation, did you become his attorney?

A. No sir.

The Court: Did he consult you as his lawyer?

A. On that day, yes sir, that is, he asked for my advice on that day.

The Court: And you gave it to him?

A. Yes.

Mr. Robertson:

Q. Did you receive any compensation for what occurred there?

Mr. Hite: Objected to as immaterial.

The Court: It is immaterial; if he consulted this witness and asked for advice we will not find out what that advice was or what was said.

Mr. Robertson: There is a matter involved here I would like to call Your Honor's attention to.

566 Mr. Hite: We object to this statement.

Mr. Robertson: I think I can show your Honor what I want is competent.

The Court: If you ask the question I will pass upon it; I do not know what your practice has been up here in this court; I only know what my limited knowledge of proceedings in court is, and that is, if questions are asked, and the court passes upon them, and either sustains or overrules an exception is taken; that is allowable; but I never have found it necessary to have a speech upon every question made or asked by any counsel; frequently it is done, I know, and the effect of it is not to be desired; some for one purpose, and some for another, make these statements and I want to cut it out as far as I can. You will understand the ruling of the court on this particular matter is, this witness says that on a certain day in December he was consulted by this defendant and his advice was asked, and what that advice was is immaterial to the inquiry, and any statement made by counsel.

Mr. Robertson: Would Your Honor kindly look at the three or four top lines there.

The Court: Every one knows that communications between lawyers and clients are privileged.

Mr. Robertson: That will in some measure apprise Your Honor of what I have in mind.

The Court: That is kind of a brief you have there?

Mr. Robertson: Yes sir, on this subject.

The Court: I will not stop to read the brief; I say any conversation that took place between this witness and this man, under the circumstances, where his advice was asked and statements made, whatever they were, by the defendant to this attorney is not competent testimony to be used in a trial.

Mr. Robertson:

Q. Did any employment result Mr. Stone?

A. No sir.

Q. Have you since been attorney for the defendant in any manner whatsoever?

A. No sir.

567 Q. Of the Badders Clothing Company?

A. No sir.

Mr. Hite: We think this is immaterial as to whether he has.

The Court: You may ask him whether after this date on which he says he was consulted, maybe not have given advice, whether he had any further conversation with this man after he ceased to be his attorney.

Mr. Robertson:

Q. Did you have any further conversation after this consultation, or any further communication with the defendant, and if so, when, Mr. Stone?

A. I wrote him a letter but had no further conversation with him.

Q. When did you write it?

A. On the 24th of December, 1913.

Q. Have you the letter?

A. I have a carbon copy of it.

The Court: Was that letter in reference to and connected with the conversation you had with him on the day before?

A. It was.

The Court: Well, the letter is not proper. Don't care what he said.

Mr. Robertson:

Q. Do you know whether Mr. Hite was then attorney for Mr. Badders or not?

A. He was not on the 24th of December.

Q. When did he become that attorney, if you know?

Mr. Hite: Objected to as immaterial.

The Court: That does not make any difference, when you became attorney or how long you have acted in the matter. This witness says he was attorney up to a certain time, and then it ceased; and it turns out from his testimony he wrote a letter to this man which terminated your connection with him. Is that so?

A. Yes sir.

The Court: What terminated it or caused it to terminate, or reasons, are not material here and cannot be gone into.

## 568 Cross-examination.

Questions by Mr. Hite:

Q. Mr. Stone, I understand you to say you were a stockholder director in the old Marshall Clothing Company.

A. I was a nominal stockholder, one share of stock was assigned me for the purpose of performing my duty as director.

The Court: It is not necessary for me to say to you, as all practitioners at this bar are good lawyers, but I think it is necessary. I should say, on the cross examination of this witness, if anything gone into that may open the door for the examination that I have closed, it will be opened.

Mr. Stone: Assure Your Honor it is not necessary to say that, Mr. Hite.

Mr. Hite: Your Honor need not warn me about that, but I appreciate your cautioning me.

Q. Mr. Stone, I understand you to say, moreover, that you never formally resigned as a director of the Marshall Clothing Company, is that correct?

A. I don't remember of ever formally resigning.

Q. Now you spoke of having surrendered a share of stock to you had?

A. Yes sir.

Q. And that was at a time when the capital stock of the Marshall Clothing Company was reduced?

A. Well I am not sure whether it was before or after the reduction. I think it was before; I think the day that stock was purchased about the eleventh of November, 1911.

Q. You were present there at the time of that transaction.

A. Yes sir.

Q. Well, Mr. Stone, that constituted a transfer, did it not, from former stockholders of the Marshall Clothing Company holding controlling interest to the defendant and some others?

A. Yes sir.

Q. I now hand you a paper Mr. Stone, and ask you please to look at the first signature on that and state if that is your signature?

A. It is. The Pd. after my name is not mine.

Q. But that is your signature, the first name there?

A. Yes sir.

Q. The Robert Stone, in other words?

A. Yes sir. That slip recalls a circumstance I had entirely forgotten when I testified. I would like to make a statement about it.

Q. Certainly Mr. Stone.

A. What is the date of that Mr. Hite? Well, some time in the spring of 1913, if I recollect, Mr. Badders came to me and said that he was anxious to raise about ten thousand dollars, I think, increasing of the capital stock of the Badders Company. That he wanted to do it for two purposes, to get a little ready money, and also, to have a number of friends in Topeka who would feel a personal interest in the store, and he was asking his friends to take one hundred

dollars' worth of stock each and asked me if I wouldn't subscribe for that amount, and I did. And I afterwards paid him the one hundred dollars. That is, it was paid, I don't remember when it was paid, whether at that time or a little later. And I did pay for one hundred dollars' worth of stock in the Badders Clothing Company; that stock was supposed, if I remember rightly, to be preferred, and to pay interest of six or eight per cent, and a little later he took up the stock and repaid me my money, with interest. I had entirely forgotten that in my earlier testimony.

Q. I am satisfied you had Mr. Stone; he took up this stock along in December some time?

A. December, 1913.

Q. That would be all Mr. Stone. I would ask the paper be identified. The paper identified by the witness consists of three pages, and the signature identified appears on the second page, and we ask this paper, with three pages, be marked as an exhibit for identification. (Paper marked Exhibit No. 57.)

570 Mr. Robertson: You have not offered it as I understand.  
Mr. Hite: No sir.

Redirect examination.

Questions by Mr. Robertson:

Q. How did you come to assign the stock back to him?

A. The understanding was it was sort of preferred stock which could be retired but it drew interest while it was outstanding; and in November or December, 1913, he gave me a check for the money, said he wished to purchase it back.

Q. You remember the occasion of the sale that was held at the store in December, 1913?

Mr. Hite: Objected to as improper redirect examination.

The Court: Let him fix the time when he sold the stock.

A. It was during that sale or shortly after the sale started I think.

The Court: Well, it was in the Month of December?

A. Month of December, 1913.

Mr. Robertson:

Q. At the taking of this stock what further purpose, if any, did the defendant represent he wanted to use these names for, these stockholders?

A. For the representation, as I remember, one, to get a little ready money, and the other, to have personal friend- who would *would* be almost certain to trade at the store.

Q. Anything said to you about using this for advertising purposes to get credit?

A. No sir.

Q. Do you know of any such conversation or talk as that?

A. No sir, I do not.

Q. What interest, if you remember, did your investment draw?

The Court: Six per cent.



A. I think it was six per cent, that is my recollection, I'm not sure.

(Witness excused.)

571 Mr. GEORGE C. GUGGENHEIM (recalled).

Questions by Mr. Robertson:

Q. Now, Mr. Guggenheim, I again call your attention to Exhibit No. 30, which was spoken of as having a piece of paper missing, and ask you to state whether you find the enclosure therein referred to now attached to Exhibit No. 30?

A. Yes sir.

Mr. Robertson: I now offer Exhibit No. 30, together with the enclosure, in evidence.

Reading Exhibit No. 30, and enclosure.

(A copy of Exhibit No. 30, and enclosure, is attached hereto and made a part hereof.)

Q. I call your attention to Exhibit No. 32 and ask you if you ever saw that before?

A. Yes sir.

Mr. Robertson: Offer Exhibit No. 32 in evidence. The signature has been heretofore identified by Ira Burdick.

Reading Exhibit No. 32.

(A copy of Exhibit No. 32 is attached hereto and made a part hereof.)

Q. Now, at the date of this, December 22, 1913, Mr. Guggenheim, where were you?

A. In Rochester.

Q. How soon after that did you go to Topeka?

A. Left for Topeka on the twenty sixth.

Q. I call your attention to a paper marked Exhibit No. 58 and state, if you know, whether that was received in the regular course by the Stein-Bloch Company.

A. Yes sir.

Mr. Hite: Let the witness state ho- it was received, if you know.

A. It was received by telegraph.

Mr. Robertson: It is a telegram, is it.

A. Yes sir.

Mr. Robertson: Offer Exhibit No. 58 in evidence.

The Court: This letter that you last referred to in your examination contained the check that you say you bought out here?

572 A. Well, it was supposed to have contained the check.

The Court: Was the check in that letter?

A. It was not.

Mr. Robertson: Reading Exhibit No. 58.

(A copy of Exhibit No. 58 is attached hereto and made a part hereof.)

Mr. Robertson:

Q. When was that received by you?

A. Twenty sixth I believe.

Q. And when did you go to Topeka?

A. Twenty sixth.

Q. Same day?

A. Same night.

Q. Did you receive that before you went to Topeka?

A. Yes sir.

Q. I will ask you whether you received the \$3,366.81 check that you have testified about before you left Rochester?

A. No sir.

Q. Where and when did that reach you, if at all?

A. In Topeka.

Mr. Hite: Your Honor, that is merely repetition. The witness stated he got it in Topeka.

The Court: Yes. He stated he got the check in Topeka and went and presented it and didn't get the money on it.

Mr. Robertson:

Q. Call your attention to Exhibit No. 28 and ask you if that was received by your house?

A. Yes sir.

Q. You have seen it before?

A. Yes sir.

Q. How soon after the date it bears will you say it was received by your house and by them considered?

A. Received *on* the early morning mail, fifth of December.

Mr. Robertson: Offer Exhibit No. 28 in evidence. Identified as to the signature by Ira W. Burdick.

Reading Exhibit No. 28.

(A copy of Exhibit No. 28 is attached hereto and made  
573 a part hereof.)

Q. What, if anything, Mr. Guggenheim, did you or your company have to do, if you know about it, with the interesting of Mr. I. J. Frankenstein in the Badders Company?

A. I know nothing personally.

Q. After he became interested what if anything did you have to do by way of assisting him?

A. Nothing more than the loaning the money at the time he started.

Q. What, if anything, had you to do with starting a bankruptcy proceeding against the Badders Clothing Company?

A. Nothing.

Q. Who are your attorneys in Topeka, if you have such?

A. McClintock and Quant.

Q. When did they become your attorneys?

A. I consulted them with reference to the drawing up of that contract in October, 1913, my first time I ever saw them.

Q. What if anything have you done, or your house, so far as you know, towards the instigation of bankruptcy or other proceeding against George S. Badders or the Badders Clothing Company.

A. We simply filed our claim through McClintock & Quant after the bankruptcy proceedings had commenced.

Q. I don't know whether I asked you, I will ask you whether you have with you at this time the daily reports which were made to you by Mr. Badders prior to December 1913?

A. Yes sir.

Cross-examination.

Questions by Mr. Hite:

Q. I understand you to say Mr. Guggenheim that the first time you ever met Mr. Badders was in Topeka in the fall of 1911, is that true?

A. That is true to the best of my recollection.

Q. At that time Mr. Frankenstein was with you?

A. No sir.

Q. Where was he?

574 A. I met Mr. Frankenstein after I came to Topeka.

Q. Did you meet Mr. Frankenstein there by appointment?

A. Not any appointment, I went there, I was requested to go there to meet Mr. Frankenstein.

Q. Who requested you?

A. I received a telegram on the road.

Q. From whom?

A. From the Stein-Bloch Company.

Q. Telling you to go to Topeka and there meet Mr. Frankenstein and Mr. Badders?

A. I believe that was the substance of it, I haven't the telegram.

Q. When you got there did you meet Mr. Frankenstein?

A. At the National Hotel.

Q. Was Mr. Badders present when you first saw Mr. Frankenstein?

A. I don't recollect.

Q. Did you have a conversation with Mr. Frankenstein alone at the National Hotel before you saw Mr. Badders?

A. Not that I can recollect at this time.

Q. You might have had such a conversation?

A. It is barely possible.

Q. Had you known Mr. I. J. Frankenstein before?

A. I had met him casually in the way of business.

Q. How many times had you met him?

A. Not very many.

Q. Had he been at Rochester?

A. I assume so.

Q. Do you know?

A. I could not state positively of any meetings previous to that time.

Q. But you did know him?

A. Yes sir.

Q. And now unable to state where you first met?

A. The only time I met him previous to Topeka must have been in Rochester.

Q. Must have been in Rochester?

575 A. Yes sir.

Q. His brother was at that time salesman for the Stein-bloch Company, travelling over the country, out in this state?

A. Yes sir.

Q. He was engaged in selling goods for the Stein-Bloch Company was he not?

A. Yes sir.

Q. How long has he been with the Stein-Bloch Company.

A. Ten years more or less.

Q. And what is his first name?

A. Harry.

Q. And what is the other brother's name? I. J. His first name?

A. Isaac, I believe.

Q. Isaac. And you had known Harry Frankenstein for a long time but you had not known Isaac very long?

A. I had only met Isaac in the way of business, as to his first name, I am not positive about that.

Q. Who is the head of the Stein-Bloch Company?

A. Louis N. Stein.

Q. Are you very well and intimately acquainted with him?

A. Yes sir.

Q. How long have you known him?

A. For thirty *off* years.

Q. Are you and Mr. Louis N. Stein on confidential terms?

A. Yes sir.

Q. Did you have a conversation with Mr. Louis Stein with reference to Frankenstein, with reference to Isaac Frankenstein going in with George Badders?

A. If I did it must have been——

Q. I didn't ask you when Mr. Guggenheim; I asked you if you had such a conversation?

A. I don't recall the conversation.

Q. I am not asking you to recall the substance of it, but did you have a conversation on such subject?

A. I must have had such conversation.

Q. And therefore you did?

576 A. I did.

Q. I understand you to say that you don't recall the substance of that conversation at all?

A. I do not.

Q. Now to refresh your recollection I will ask you Mr. Guggenheim if Mr. Badders did not go to Rochester to see Mr. Louis Stein before he embarked at all in the clothing business?

A. I don't recall his visit.

Q. You don't recall his visit?

A. I don't recall his visit.

Q. Did Mr. Louis Stein tell you that Mr. Badders had been there

and talked with him about buying out the Marshall Clothing Company?

A. No, he could not because I was not in Rochester.

Q. I said didn't Mr. Louis Stein tell you that Mr. Badders had visited Rochester and talked over that matter with him?

A. Not that I recall.

Q. To further refresh your recollection, didn't Mr. Louis Stein tell you that when Mr. Badders came there and talked this matter over with him that he suggested that Mr. Badders go in with Isaac Frankenstein?

A. No sir, not to me.

Q. Did Mr. Harry Frankenstein have a conversation with you on that subject?

A. No sir.

Q. Did you talk with Mr. Harry Frankenstein about the prospect of having Isaac Frankenstein go into the clothing business with Badders?

A. No sir.

Q. Then you never had before you came to Topeka to meet Mr. Frankenstein knowledge of any negotiations between Mr. Badders and Mr. Louis Stein looking to a combination between Isaac Frankenstein and Badders?

A. Not that I can recall.

Q. When did you and Louis Stein first talk over this project of Badders and Frankenstein taking over the Marshall Clothing  
577 Company?

A. I didn't talk over the project, I was not in Rochester. I received a telegram when I was away from Rochester, instructing me to come to Topeka to talk it over.

Q. Please examine this paper that I now hand you Mr. Guggenheim and state if those are you- initials on the bottom? Are they?

A. G. S. B. are not my initials.

Q. Well, did you ever see that letter?

A. I don't recall it.

Q. Did you receive the original of which this is a carbon copy?

A. It is addressed to me.

Q. I didn't ask you that Mr. Guggenheim.

A. I don't recollect receiving the original; I don't deny I received it, I don't recollect receiving it, but I don't deny receiving it.

Q. Have you now in your possession the original of this letter?

A. No sir.

Mr. Hite: We offer this paper to which the witness' attention has been directed, in evidence.

The Court: What do you say Mr. District attorney?

Mr. Robertson: Just want to see what it is? Objected to as not proper cross examination, no identification having been made.

The Court: He says he don't recall having received an original, don't know anything about that. What do you want to do about it.

Mr. Robertson: I object to it.

The Court: Objection sustained.

Q. Did you ever receive in any letter from Mr. Badders an enclosure addressed to a person by the name of Ike?

A. Not that I can recall.

Q. Have you now in your possession or under your control here in Topeka the letters that, the original letters that were received by you from November 15, 1911, down to January 30, 1912, 578 1914; I'm not speaking now of the letters addressed to the Stein-Bloch Company, but letters addressed to you?

A. Only such as have appeared in court.

Q. Have you made any examination of those letters for the purpose of refreshing your recollection as to whether you ever received the original of which the copy was exhibited to you?

A. Which copy do you refer to.

Q. The one I now hold in my hand?

A. I have not but I will be pleased to do so.

Q. Will you do so during the recess hour then?

A. Yes.

Mr. Robertson: Will you please let us have it identified.  
(Identified as Exhibit No. 59.)

Mr. Hite:

Q. Please examine the paper I now hand you and state if you ever received the original of that letter?

Mr. Robertson: Your Honor, I would suggest this paper may be marked in some way.

Mr. Hite: This one has just been marked for identification.

Mr. Robertson: The ont that witness is looking at.

Mr. Hite: They will be marked in due course.

A. I don't recollect this letter.

Q. Will you during the same time Mr. Guggenheim referred to as Exhibit 59 look and see if you have the original of this letter which I ask to be marked Exhibit No. 60?

A. Yes sir.

Q. Mr. Guggenheim did you not write to the defendant George S. Badders a letter acknowledging the receipt of the letters to which I have just now directed your attention, Exhibits number fifty nine and sixty?

A. I may possibly, if I received them.

Q. I now hand you this paper and ask you if that is your signature?

A. It is not.

Q. Whose signature is that? Who did the writing?

579 A. Why it is my language, I would say I wrote that letter.

Q. Well, do you say it, that you wrote it or not?

A. Well, in the absence of the signature, and the letter being dated over three years ago, I can't admit it.

Q. Do you deny that you wrote the letter Mr. Guggenheim?

A. No sir, I do not, I don't admit it.

Q. What do you say as to your having dictated that letter?

A. I may possibly have dictated it.

Q. Well, did you or did you not?

A. I don't recollect.

Q. Do you know in whose handwriting the signature G. C. G. appears on that letter?

A. I do not.

The Court: Do you know who signed G. C. G.

A. No sir.

Q. Don't know the handwriting?

A. No sir. I don't deny that I wrote that letter, I have no recollection of writing it.

Mr. Hite: Please examine this paper which I will ask to have marked Exhibit No. 61; state if an examination of that paper Mr. Guggenheim refreshes your recollection as to Exhibits Nos. 59 and 60?

A. I should say this letter was the acknowledgement of the receipt of those papers but I have no personal recollection of them; it is to your back; I might also add, with your permission, that we had no connection with the Robinson Marshall Company at that time; we were not creditors or interested in the sale, and I would not charge my memory with something I am not interested in.

Q. Mr. Guggenheim, you will pardon me for interrupting you, but I think we will get along faster if you will answer the question directly as put to you. My question is, Mr. Guggenheim, whether by reading that letter your recollection is so refreshed you can now tell the jury whether you received Exhibits Numbers fifty nine and sixty?

A. I have no recollection of having received them.

Q. With reference to this Exhibit No. 61, please state whether or not that is written on the regular letter paper of the Stein-Bloch Company?

580 A. It appears to be.

Q. Was it written at the Stein-Bloch Company's office?

A. I can't say that.

Mr. Hite: We offer Exhibit No. 61 in evidence.

Mr. Robertson: Objected to as not identified and not cross examination.

The Court: I don't think it has been sufficiently identified.

Mr. Hite: We except to the ruling of the court.

Mr. Robertson: We would like to have those letters during the noon hour to compare with what Mr. Guggenheim may have here as to their authenticity.

Mr. Hite: I will give them to them Your Honor.

Mr. Hite:

Q. Mr. Guggenheim, who has authority in the Stein-Bloch service to sign your name to letters?

A. No one.

Q. No one. Then if your name appears on this letter, referring to Exhibit No. 61, it was signed without authority, was it?

A. Signed without authority.

Q. Signed without authority.

A. Yes sir.

Q. Were some of the letters dictated by you signed by one of your clerks or employes at any time?

A. It is possible, could be done.

Q. It is possible?

A. Yes.

Q. And, as I understand it, you do not deny that the language in this letter is your language?

Mr. Robertson: Objected to as repetition and argumentative besides.

The Court: I think that is true too. He says that he didn't sign that letter, don't remember to have signed it or authorized any one else to have signed it for him.

Mr. Hite: I understand Your Honor does not care to hear from counsel on this objection. I would like to make some suggestions if your Honor cares to hear them. Does your Honor care to hear them?

581 The Court: No.

(A copy of Exhibit No. 61 is attached hereto and made a part hereof.)

Mr. Hite:

Q. Mr. Guggenheim, please examine the initials at the bottom of this letter Exhibit No. 61, G. M. H. and state whose initials those are?

A. I don't know.

Q. Are you able to say whether they are the initials of a stenographer in your office?

A. They are not the initials of the stenographer in our office at present time; I don't know whether we had one four years ago with those initials or not; at the present time I don't know any one in our employ with initials of G. M. H.

The Court: Have you got all the correspondence here?

A. All that I could locate.

Q. All that you could locate?

A. Applying to this case.

Q. Applying to this case?

A. Yes sir.

The Court: Suppose you hand that letter to him and let him see; probably that would shorten it.

Mr. Hite: I will Your Honor. It interrupts the course of the cross examination; I had supposed this letter would be admitted.

Q. Now, after you had had a talk with Mr. Frankenstein, I am referring *not* to Mr. Isaac Frankenstein, at the National Hotel you went with him to see Mr. Badders, did you?

A. No, my recollection is Mr. Badders came to the Hotel; our talk was in the hotel.

Q. Did you have some conversation with Mr. Badders over the telephone?



A. I do not recollect now, a conversation four years ago.

Q. At all events, you and Mr. Badders and Mr. Frankenstein h  
some talk there at that time, did you not.

A. Yes sir.

Q. Was that talk relative to the contemplated purchase by M  
Badders and Mr. Frankenstein of the stock of the Marsh  
582 Company?

A. Yes sir.

Q. When I speak now of stock I have reference to the corpor  
stock?

A. No.

Q. It did not?

A. No.

Q. This conversation then had reference to the purchase of t  
physical property?

A. Yes sir.

Q. Now at that time the Marshall Clothing Company was runni  
a clothing establishment in a retail way on the corner of Seventh a  
Kansas Avenue in Topeka, was it not?

A. Yes sir.

Q. The same location in which was located the store of the B  
ders Clothing Company?

A. Yes sir.

Q. How long did you remain in Topeka at that time?

A. Possibly two days.

Q. And that was in October or September of 1911?

A. It was either in late September or early October.

Q. Did you go through the stock and look at it?

A. Yes.

Q. Did you go through the books of the Marshall Clothing Co  
pany or have some one do it for you?

A. I didn't do it, I think Mr. Badders told me he had some one  
through the books.

Q. Are you acquainted with a man by the name of Rhodes  
Topeka who does accounting?

A. No sir.

Q. Did you at that time have a talk with Mr. Rhodes about t  
condition of the books?

A. I talked with some one who came upstairs into the room.

Q. But at all events you and this person, whatever his name  
and Mr. Frankenstein and Mr. Badders talked over the co  
583 dition of the Marshall Clothing Company as to what i  
books showed?

A. As to what its assets were.

Q. And also as to what its liabilities were?

A. I assume so yes sir.

Q. Mr. Guggenheim wasn't it there made known to you that th  
Marshall Clothing Company claimed assets of about ninety thousan  
dollars consisting of their stock of goods?

A. Yes I believe the stock of goods was eighty eight thousan

dollars, or the entire assets of the corporation was eighty eight thousand.

Q. Did not your investigation there develop that the Marshall Clothing Company at that time owed on marchants' accounts some forty three thousand dollars?

A. I don't recollect.

Q. You don't recollect?

A. No, I don't recollect.

Q. Something of that kind might have been said at that time?

A. Possibly, I don't deny it.

Q. You did learn there, however, did you not, that the Marshall Clothing Company was heavily in debt?

A. Why I did know at the time their indebtedness. I don't know what it was now.

Q. You went through and looked at this stock of goods and furnishing goods?

A. Yes sir.

Q. Did you not there state Mr. Guggenheim that was probably the worst stock of goods you ever saw?

A. Yes sir.

Q. And that was a fact, was it not?

A. I believe it was.

Q. And you now tell that to the jury as your best judgment of what that stock was, from your experience as a man in the clothing business?

A. Yes it was a poor stock and I advised them not to buy it.

Q. Just a moment, Mr. Geggenheim, we will progress rapidly enough; and you do not recall having an accountant go over the books for the purpose of ascertaining what the debts were?

A. I positively employed no one.

Q. You did not employ anybody?

A. Positively no.

Q. Did you know of Mr. Isaac Frankenstein and Mr. Badders employing some one?

A. I don't know who employed the man, or whether he was employed. I recollect some one coming up there with the figures.

Q. Now then the result of this visit of yours there in Topeka in September, 1911 or in October 1911, whichever the fact may be, was that you found a stock, the worst you ever saw; that somebody employed an accountant to go over the books and ascertain the financial condition of the Marshall Clothing Company and you advised Mr. Frankenstein, Mr. Isaac Frankenstein and Mr. Badders not to touch it, did you not?

A. Yes sir, yes sir.

Mr. Robertson: Just a moment Mr. Guggenheim; I want to object to that, and I do object to that question as being argumentative and embodying several questions in one, and being ingenuous.

The Court: Overruled. I overrule the objection that is made to the introduction of that testimony; I, up to this time, do not see what

that may have to do with the real question involved in this case, but it will probably develop as you go along.

Mr. Hite: I apprehend it will Your Honor.

A. I advised them not to buy the stock.

Q. For the reasons that you have heretofore stated to the jury?

A. What reasons have I stated heretofore?

Q. That it was a very poor stock and that it was too large?

A. Yes sir.

Q. Now Mr. Guggenheim, from your examination of the  
585 stock, state whether or not it consisted in very considerable part of very old and out of date goods?

A. No, I wouldn't say that.

Q. Were there not a lot of goods there that were not salable readily?

A. I would consider that there was too much stock there for the size of the business they were doing; they were doing a business if I recollect right, their business was less than the amount of their stock, their annual business; didn't turn over their stock once. The goods that I saw that was old was goods down cellar, that is what I saw.

Q. And it was the worst stock you ever saw?

The Court: He said that two or three times; said it was a bad stock; not necessary to repeat it; take it for granted it was.

Mr. Hite:

Q. Mr. Guggenheim on that occasion did you meet Mr. Andrews?

A. Yes sir, I met Mr. Andrews.

Q. Who was Mr. Andrews with reference to this Marshall Clothing Company?

A. Mr. Andrews was introduced to me by Mr. Badders as the owner of the stock.

Q. Did you have a talk with Mr. Andrews with reference to this contemplated purchase by Mr. Badders and Mr. Frankenstein?

A. The substance of the conversation I don't recall, there was some talk, what it was I don't remember at this time.

Q. Did you and Mr. Frankenstein go away from Topeka together?

A. No sir.

Q. Where did you go from Topeka?

A. I don't know at this time.

Q. Do you know where Mr. Frankenstein went?

A. I do not.

Q. Do you know whether he remained there in Topeka?

A. I do not.

Q. While you were there Mr. Guggenheim were negotiations pending between Mr. Badders and Mr. Frankenstein  
586 and Mr. Andrews?

A. Not that I know of.

Q. Did you make an offer or suggest an offer that these men should make to Mr. Andrews?

A. No, I advised them not to make any offer.

Q. Did you have a talk with Mr. Andrews looking to making an offer?

A. Not that I recall.

Q. Are you positive about that?

A. Well I am just as positive as I can be over a casual conversation over three and one half years ago.

Q. It was a casual conversation there, was it?

A. Undoubtedly.

Q. Do you recall whether you had more than one talk with Mr. Andrews?

A. I do not.

Q. When did you see Mr. Frankenstein?

A. I don't remember, I can't fix the date. Assume from what happened that it was early in 1912, may have been in December, I wouldn't want to testify as to what I cannot remember.

Q. Early in 1912?

A. I am not positive about that.

Q. Well, haven't you testified you went out there in 1912 again?

A. No I have not, not to my recollection was I in Topeka in 1912.

Q. While you were there in Topeka on this occasion in the fall of 1911 I understand you to say that you were referred to John R. Mulvane?

A. Yes sir.

Q. Did you have a conversation with Mr. Mulvane?

A. Yes sir.

Q. Did you tell him what you were there for?

A. Yes sir.

Q. What did you say to him about that?

587 A. If I recollect right Mr. Badders requested that I interview Mr. Mulvane as to his character and as to his ability. I saw Mr. Mulvane and Mr. Mulvane told me that Mr. Badders was all right.

Q. Did you ask Mr. Mulvane anything about Mr. Badders' financial standing there in the community?

A. I believe that he said that he would help him.

Q. Who was Mr. Mulvane?

A. Mr. Mulvane, Pre-ident of the Topeka National Bank, I believe is the name of it.

Q. To correct you Mr. Guggenheim, it is the Bank of Topeka, is it not?

A. I assume it is.

Q. Do you know anything about Mr. Mulvane's standing in the financial community there?

A. Nothing more than he is president of the bank.

Q. And your firm or corporation were prepared to accept his statement as to the financial standing of men in that community?

A. Not entirely, it would go towards assisting.

Q. Was Mr. Frankenstein with you when you saw Mr. Mulvane?

A. No.

Q. At the time of your visit there in the fall of 1911 the Stein-Bloch line of clothing was not represented in Topeka, was it?

A. I don't know whether we were selling the Famous at that time or not. That I cannot recollect; I could have ascertained from the books, but I don't recollect.

Q. Well, whatever representation you had there was not satisfactory, was it?

A. Absolutely not.

Q. Do you know of any other competitive lines of clothing that were represented there?

A. Yes.

Q. And was it one of your purposes in going out there to look into this matter to introduce the Stein-Bloch clothing into Topeka?

588 A. Yes sir.

Q. And to get it planted there as other competitors had theirs planted?

A. No, we didn't want ours planted, we wanted it on top of the earth.

Q. That is not so safe, now, in the aeroplane age, I guess, Mr. Guggenheim. After you left Topeka you kept in touch with Mr. Badders through correspondence, did you not?

A. I don't recollect it.

Q. Please examine this letter which I now hand you and state whether that letter was sent by you to Mr. Badders?

A. Yes sir, I wrote that letter; that is my signature.

Q. Sir?

A. That is my signature. If you will let me see if that is the same stenographer who wrote the other letter, possibly that will help you along. No, there is not any.

Q. We will go into that after you have had opportunity to search for the original?

A. I would be glad to identify it if it was.

Mr. Hite: We offer the letter identified by the witness in evidence, Exhibit No. 62.

Mr. Robertson: We have no objection.

Mr. Hite, reading Exhibit No. 62.

(A copy of Exhibit No. 62 is attached hereto and made a part hereof.)

Q. No-, Mr. Guggenheim, you had known before you went to Topeka in the fall of 1911 that Mr. Badders had never had any experience whatever in the clothing business?

A. No, I met Mr. Badders in the fall of 1911 at Topeka, to the best of my recollection.

Q. But you knew he knew nothing about the clothing business?

A. I assumed that from his conversation while there. He was, as I understand, secretary of some Commercial Association. I talked with him at the time and knew he had no knowledge of the clothing business.

Q. Did you know whether Mr. Frankenstein had any knowledge of the clothing business?

589 A. I knew Mr. Frankenstein did have knowledge of the clothing business.

Q. How much experience had Mr. Frankenstein had?

A. I don't know, we sold them for several years.

Q. His store carried that line in Michigan?

A. Yes sir.

Q. And had done so for a number of years?

A. Yes sir.

Q. Did you have an arrangement for somebody to succeed Mr. Frankenstein in Michigan?

A. No sir.

Q. Did he carry on the same store there too?

A. Yes sir.

Q. So you didn't lose your Michigan customer?

A. We did not.

Q. I understood you to say on your direct examination that the first bill of goods you sold to the clothing company, whether it was the then Marshall Clothing Company I do not recall, or the Badders Clothing Company, whichever it was, was in the spring, February or March of 1912, is that right?

A. It was shipped, not sold, that is to the best of my recollection.

Q. Was Mr. Frankenstein in the Badders Clothing Company then?

A. Why I assume he was.

Q. Don't you know that he was Mr. Guggenheim?

A. I take it for granted he was in the Badders Clothing Company.

Q. Now you recommended the Stein-Bloch Company to lend Mr. Frankenstein seventy five hundred dollars, didn't you?

A. No, I did not personally; my recollection of the matter is Mr. Frankenstein had told me his assets at Hillsdale were not liquidated, and that we loaned him this money until he could dispose of a house or some other property at Hillsdale.

Q. Well, didn't you recommend to the Stein-Bloch Company to have Mr. Frankenstein go into this clothing business?

A. I didn't recommend it, no.

590 Q. Had nothing to do with it?

A. I passed on the matter after it was finished.

Q. Who was the one who did it?

A. I don't know.

Q. You don't know?

A. I don't know who he may have had the conversation with, he should have had the conversation with Mr. Louis N. Stein.

Q. Well did Mr. Louis N. Stein consult with you as to what you found the conditions to be out in Topeka?

A. I reported that when I came back, of course.

Q. Didn't he consult with you about letting Mr. Frankenstein have this seventy five hundred dollars?

A. I don't recollect the conversation.

Q. Well did he consult with you on that subject at all Mr. Guggenheim?

A. I don't recollect the conversation.

Q. And you aren't able to tell the jury whether you had a conversation or consulted with Mr. Louis N. Stein looking to the loan to Mr. Frankenstein of this seventy five hundred dollars?

A. I assume I did.

Q. Did you report to Mr. Louis Stein after your return from your visit in the fall of 1911 that you had found out there a stock that was about the worst you ever saw?

A. Possibly not.

Q. Did you tell him that you could not recommend that proposition out there?

A. That is probably what I reported.

Q. Now how did you come to recommend it in the spring of 1912?

A. The recollection I have of the matter is, that Mr. Badders came to Rochester and said that he had disposed of that stock and that he had no debts and he had some money left and had the empty store and fixtures and the lease; that was an entirely different proposition, the merchandise was gone.

Q. Now when Mr. Badders came to Rochester and told you that,

Mr. Guggenheim, did you make an investigation to ascertain  
591 whether that was so or not?

A. I relied on Mr. Badders.

Q. Entirely?

A. Entirely, yes sir. Made no investigation.

Q. So you believed it then?

A. Yes.

Q. Have you ever learned of anything since that statement was made to you that it was not true?

A. No sir.

Q. Then so far as you know, the statement that Mr. Badders made to you then, that he had disposed of that stock, and had paid the debts, and had some money left, is true?

A. Yes sir so far as I know.

Q. And that, I understand you to say, was between the time that you left Topeka in October 1911 and in February 1912?

A. No, I won't state the time, I recollect the conversation; I assume that it was after the time I was in Topeka because it must have been, but how soon after I left Topeka, and how soon in 1912 that conversation took place, I won't state.

Q. Well, it must have been before you shipped the goods?

A. Well, I assume so.

Q. Well, why isn't it impossible it should be otherwise?

A. Because I will not give a statement I am not positive of.

Q. I am not asking you to fix any day, I am asking you if that is not the change that took place between those dates of October 1911 and February 1912?

A. I am not positive as to when the conversation took place.

(12:30 p. m.)

The Court: Mr. Marshal, you may take the jury to the hotel for their dinner. Recess until two o'clock.

(2:00 O'CLOCK P. M., TUESDAY.)

Mr. GUGGENHEIM (on the stand).

Cross-examination.

Questions by Mr. Hite:

Q. Mr. Guggenheim, during the recess did you examine the letters that I interrogated you about?

592 A. Yes sir.

Q. And did you then reach a conclusion as to whether you had received the two letters marked Exhibit- No. 59 and 60.

A. I cannot find the originals.

Q. Well, what do you say now as to whether or not you received the originals of these two letters?

A. I have no recollection of having received them and have no way of refreshing my memory.

Q. With reference to Exhibit No. 61 which I now hand you, did you also look into that matter during the noon hour, and are you now able to say whether that letter was dictated by you and sent to Mr. Badders?

A. I can't state positively on account of my signature not being there. The stenographer G. M. H. is not familiar to me. We have a number of stenographers and I do not know that name; it is a matter over three and one half years ago.

Q. Please keep that number 61 in your hand a moment, and examine Exhibit No. 62 and state whether they are not written on the same typewriter?

A. I am not, I never run a typewriter, not able to pass upon it as an expert.

Q. Have you any doubt but that they are written on the same typewriter?

A. I have no way of ascertaining.

Mr. Robertson: Objected to as argumentative. Objected to as being purely argumentative and not cross examination.

The Court: He says he is not an expert on typewriters and he couldn't tell whether these letters were written on the same typewriter or not.

Mr. Hite:

Q. Mr. Guggenheim, please give to the jury your best judgment as to whether or not Exhibit No. 62 was written on the same typewriter as Exhibit No. 61?

Mr. Robertson: Objected to because the witness is not competent to answer and not cross examination.

The Court: Answer.

A. I have no way of ascertaining.

593 The Court: Well that is an answer. Don't prosecute this inquiry any further.



Mr. Hite: We ask that the witness be required to give a more direct answer. The question was, to give the jury his best judgment as to whether these were written on the same typewriter.

The Court: Have you any judgment upon that subject?

A. Absolutely none.

Mr. Hite:

Q. Mr. Guggenheim, give to the jury the benefit of your best judgment as to whether you dictated this letter referred to as Exhibit No. 61?

A. I have no knowledge of the letter; I don't want to say that I dictated it; I don't deny that I dictated, but I have no knowledge of having dictated it.

Q. Have you been directed by any person Mr. Guggenheim that where a letter is not signed by you that you may safely have doubts concerning writing it?

A. No sir.

Mr. Hite: If Your Honor please, we ask leave to submit these two documents, Exhibits No. 62 and Exhibit No. 61 to the jury for the purpose of having their judgment as to whether they were written on the same typewriter.

Mr. Robertson: Objected to as not cross examination, no foundation.

The Court: I do not think you should do that in any well regulated or disposed court. Objection to such a use of them is sustained.

Mr. Hite: To which we except.

The Court: If it becomes material to show they were written on the same typewriter you might introduce somebody to say it was, if they know; but until that time comes I cannot tell, you cannot tell, no one else can tell.

Mr. Hite: The practice I referred to, if Your Honor cares to hear from us, has been approved, where sufficiently identified, as by papers from the same office from which the paper emanated, and the typewriting is of sufficient similarity, it was a question for the court to say whether the jury might not say they were written in the same office.

The Court: I don't know anything about such authority.

Mr. Hite:

Q. Before the adjournment Mr. Guggenheim you had been interrogated with reference to your first shipments of goods to the Badders Clothing Company. I will ask you if at a time prior to the time of this first shipment, which I understand was in February, 1912, Mr. Frankenstein had corresponded with you on the subject of going in with Mr. Badders in the clothing store?

A. There may have been letters to that effect.

Q. Have you any remembrance of having had any such letters?

A. No sir. I know that I must have received one letter, simply

refreshing my memory from one of these letters you produced, the contents of that letter I don't know.

Q. Your best recollection is then that you did have some correspondence on that subject?

A. Not my best recollection, my recollection refreshed from your exhibit——

Q. I am speaking from your best recollection as refreshed now, that you did have correspondence with Mr. Isaac Frankenstein on that subject?

A. There must have been some correspondence.

Q. As a result of that correspondence did you or any person connected with your corporation recommend to Mr. Frankenstein to go in with Mr. Badders?

A. Not to my knowledge.

Q. Was that subject discussed between you and Mr. Louis Stein?

A. No sir.

Q. As I understand you Mr. Guggenheim, you previously had advised Mr. Frankenstein to stay out of that?

A. Not to buy the Robinson Marshall stock, or whatever the name of it was.

595 Q. Now do you know how Mr. Frankenstein happened to go in with Mr. Badders after you had told him not to?

A. I do not.

Q. And as I understand it, what you want the jury to understand is, as to your recollection on the matter, that the next thing you learned of was Mr. Frankenstein had gone in with Mr. Badders?

Mr. Robertson: Objected to as argument of counsel.

The Court: I am going to let it in with a view of getting through with this examination some time or other. I shall notify the jury now, and notify counsel now, that the court will probably have something to say in reference to these matters ultimately.

Mr. Hite: We except to the remark of the court.

The Court: And I will take this testimony, tentatively, so to speak, and rule upon it finally when I come to that.

A. Shall I answer?

Q. Yes?

A. Whatever details may have been gone over in December or January, December 1911 or January 1912, I at this time have no personal recollection, nor do I recollect that I negotiated between Frankenstein and Badders, or between Badders and the Frankenstein or between Frankenstein and the Badders Company in any shape or manner, that is, I have no recollection of ever entering into any negotiations between those people.

Q. Mr. Frankenstein has been here in Kansas City for several days, has he not?

A. Mr. Frankenstein has been here since yesterday.

Q. Have you seen him?

A. I have seen him.

Q. Have you talked with him?

A. I have not had a conversation of any detail with him.

Q. Have you talked with him about his connection with this Badders Clothing Company?

A. Not in any way or shape in reference to this testimony of mine.

596 Q. What character of goods was it that you shipped to the Badders Clothing Company in February 1912?

A. I didn't sell the bill, I don't sell goods; I simply know that in 1912 the Badders Clothing Company received a shipment from the Stein-Bloch Company.

Q. Mr. Guggenheim, you are here speaking for your corporation?

The Court: He is speaking for himself, nobody else; he is a witness on the stand and he is only responsible for his statements, and what he states here of his own knowledge.

Mr. Hite: We ask that the witness answer the question.

The Court: He need not answer that question.

Mr. Hite: Except.

Q. Your business in connection with the Stein-Bloch Company is to look after customers I believe you said on direct examination.

A. Not necessarily, no sir.

Q. Didn't you testify that on your direct examination?

A. I don't demember the exact words; my connection with the Stein-Bloch Company is general.

Q. Well, among other duties you have is to look after the customers?

A. If you see fit to put it in that way.

Q. Didn't you say that Mr. Guggenheim on your direct examination?

A. I don't remember that exact language.

Q. Now as to the Badders Clothing Company, you particularly looked after that customer, did you not?

A. I did not.

Q. Who of the Stein-Bloch Company did look after that customer?

A. After we had opened the account with the Badders Clothing Company they were looked after in no other way than our other thousands of customers were looked after, they were simply one of our customers.

Q. You had looked after this particular customer to a sufficient extent to approve at least a loan by the Stein-Bloch Company to Mr. Frankenstein of seventy five hundred dollars?

597 A. Yes sir.

Q. Was that a common practice of the Stein-Bloch Company?

A. It was a personal loan to Mr. Frankenstein, no connection with the Badders Clothing Company.

Q. Mr. Guggenheim is it a common practice for the Stein-Bloch Company to loan individuals or partnerships or corporations to go into the retail clothing business.

Q. We do it quite often.

Q. How often?

A. Probably a dozen or fifteen cases on hand at the present time.

Q. And what is the purpose of that?

A. To assist them in building up their business.

Q. And to get customers?

A. And to get customers.

Q. When did you come out to Topeka next after the fall of 1911?

A. I have no recollection of being in Topeka during 1912, I may have been here; there was nothing that happened during 1912 with reference to Topeka that would attract my attention to it.

Q. You stated on your *direction* examination that fall goods were ordered in the spring?

A. Fall goods are ordered in the spring, yes sir.

Q. And that includes winter goods too?

A. That is winter goods, when I speak of fall.

Q. And spring and summer goods were ordered in the fall, is that correct?

A. Yes sir.

Q. Now I understood you to say also that goods ordered in the spring were not shipped until fall?

A. Goods ordered in the spring are shipped commencing in July.

Q. So that this shipment made by the Stein-Bloch Company in February 1912 was what kind of goods?

A. Was spring goods.

Q. Spring goods?

A. Yes sir.

598 Q. Now do you know whether the Stein-Bloch Company shipped the Badders Clothing Company any goods in the fall of 1912?

A. In the fall of 1912, no.

Q. Didn't ship any?

A. Not to my knowledge.

Q. So the Stein-Bloch Company didn't sell the Badders Clothing Company any fall or winter goods in the year 1912, is that true?

A. The Badders Clothing Company were not in business in 1912, 1911, oh yes, that was 1912 we opened our account in 1912; may I refresh my memory?

The Court: Yes.

A. The Badders Clothing Company account on our ledger was opened on February 12, 1912.

Q. Well I understood you to say that you shipped goods out there in 1912; that is what you stated, didn't you?

A. We certainly shipped goods in 1912.

Q. Now you said in February 1912?

A. We shipped the goods in February 1912.

Q. And you said those were spring goods?

A. Not to my personal knowledge, I assume they are from the time of the shipment; I am not a salesman and did not sell the goods.

Q. Do you know whether the Stein-Bloch Company shipped the Badders Company any fall or winter goods in 1912?

A. We shipped them a lot of light weight overcoats I believe was the opening bill, I saw them in the shipping room, those are spring goods.

Q. When was the next shipment you made to the Badders Clothing Company?

A. I have no knowledge.

Q. You have no memoranda there in your hand from which you can determine that?

A. I have a memoranda showing their bulk account, not the individual shipments.

Q. Now in 1913 you recall beeing in Topeka again, do you not?

A. I was in Topeka in February 1913.

599 Q. What was the occasion of your visit at that time?

A. The occasion of my visit at that time was that on February 1, 1913, they owed us \$18,576.78 on open account.

Q. Now Mr. Guggenheim you say that they owed you that much, you don't know that of your own knowledge, do you?

A. I take that from our books of account.

Q. And you are not testifying now as to any knowledge of the fact, but from what you have been told by somebody in the service of the Stein-Bloch Company?

A. From my own investigation of our books of accounts.

Q. From what you have seen on the books?

A. Yes sir.

Q. And that is all you know about it?

A. Yes sir.

Q. And when you came out to Topeka in February 1913 your understanding from these books was that the Badders Clothing Company owed eighteen thousand dollars?

A. Yes sir.

Q. Do you know anything about the terms of sale when goods shipped to the Badders Clothing Company were to be paid for?

A. No.

Q. Did you ever have any arrangement or agreement with the defendant Mr. Badders with reference to that matter?

A. There was some slip I gave him, it was in writing, in February, I have not a copy of that slip.

Q. Well, do you know what that was independently of any slip?

A. The arrangement that I made in February, 1911, 1913, was that if he would pay us ten thousand dollars we would transfer to him in the event of his buying out the Frankenstein interest, that loan, and would take his notes for the loan; I have the notes with me in fact.

Q. Just continue with what you were saying.

A. Take the notes for that amount, secured by the same security as Mr. Frankenstein was giving us, and that he could pay us one hundred dollars a month on those notes.

Q. Now is that all the arrangement that you made then?

600 A. There may have been some arrangement as to discount, I don't recollect it, but I do know that on the ten thousand dollars we gave him the discount that he would have received.

Q. Was there any arrangement made at that time between the Stein-Bloch Company, represented by you, and the Badders Clothing Company, represented by Mr. Badders, with reference to the time when shipment made by your house should be paid for?

A. Not that I recollect at this time.

Q. Did you not at that time enter into an agreement with Mr. Badders that one season's goods were not to be paid for until the next season's goods were received?

A. If it was the paper that I gave Mr. Badders shows it.

Q. And now you have no recollection of having done that?

A. I don't know; I have not; the best of my recollection is I have not; whatever agreement was made was in writing and I have no copy.

The Court: Did you give him a copy?

A. I did.

Mr. Hite:

Q. Now when you went out to Topeka in October, 1913, you say you were there then?

A. Yes.

Q. Was there one season's goods not paid for?

A. It was more than one season's goods not paid for.

Q. I am talking now about October, 1913?

A. In October 1913 there was \$13,631.43 not paid for.

Q. Was that more than one season's goods?

A. I can't tell you.

Q. You don't know, do you?

A. No sir, the ledger here will show that.

Q. Well you personally don't know?

A. Personally I don't know.

Q. And you didn't inform yourself as to that when you went to Topeka in October 1913?

A. I may have at the time, yes sir.

Q. And you are unable to say now whether you had informed yourself of that?

A. I can't say positively.

601 Q. Now when you went out to Topeka in October, 1913, you went out to collect the whole amount of the bill, did you not?

A. No sir, I did not.

Q. Did you at that time undertake to make Mr. Badders pay in installments every thirty days?

A. Whatever conversation we had or whatever agreements we made have been reduced to writing and that is in evidence.

Q. Where was that writing made; where was that contract made, in Topeka?

A. The conversations with reference to that contract were at McClintock & Quant's office with Mr. Badders.

Q. You had sent for Mr. Badders to come up there had you?

A. I presume I did.

Q. McClintock & Quant were your attorneys?

A. They were my attorneys at that time.

Q. Mr. Badders have any attorney with him?

A. Not at the office, no sir.

Q. Did you afterwards go to Mr. McClintock's house?

A. No.

Q. Did you have Mr. Badders up there at Mr. McClintock's house?

A. No sir.

Q. On one evening?

A. No sir.

Q. At that time according to the terms of this contract the Badders Clothing Company was indebted for goods shipped in the fall of 1913, was it not?

A. If it says so.

Q. And you were then arranging for a payment of five hundred dollars a month on that account also, were you not?

A. Also.

Q. I call your attention to this provision of that contract: If the Badders Clothing Company shall pay for all the goods shipped for the fall of 1913 on a discount basis, the bills to be paid when  
602 due and shall pay for all goods to be shipped in the future cash less nine per cent discount, that is, all goods are to be paid for in cash less nine per cent at the end of the month of their shipment, and ask you what that means?

A. That meant that any goods that were shipped to them after January 15, 1914, must be paid for at the rate of nine per cent discount at the end of the month in which they were shipped; no goods were ever shipped under that provision.

Q. Now you stated that under that agreement there was some amount due in December?

A. Yes sir.

Q. The amount that was due in December included some of the amount for the fall goods of 1913, did it not?

A. Certainly.

Q. Now at the time that you got this agreement from the Badders Clothing Company, or that it was made, you were pressing Mr. Badders for settlement of some kind, were you not?

A. They may have written him for money, I don't know.

Q. Will you answer my question?

A. They may have written him for money, I don't know.

Q. But weren't you doing so?

A. No I came to Topeka at the request of some one whom I supposed to be the secretary of the company.

Q. And when you got to Topeka you entered into this contract with this company and asked Mr. Badders for security, did you not?

A. Yes sir.

Q. And you had him agree not to make any change in the lease under which he held the store?

A. Whatever agreement was made is in the contract.

Q. But that is what you did Mr. Guggenheim?

A. If it is so stated in the contract.

Q. And do you now say you were not pressing the Badders Company for settlement?

A. I was not pressing them, no sir.

Q. At that time was anything said about your previous agreement as to the time when the goods were to be paid for?

A. I don't recollect.

Q. Isn't it a fact Mr. Guggenheim Mr. Badders was protesting against any change in the agreement that had been made in February 1913 in reference to when goods should be paid for?

A. To me personally?

Q. Yes, or in your presence?

A. I don't recollect anything, he may have said so.

Q. He signed this agreement very unwillingly?

A. No, this contract was not mailed to us until possibly two weeks after I was there.

Q. But you and Mr. Badders and Mr. McClintock understood what it was to be, *had* you not?

A. The provisions.

Q. And you had told Mr. Badders you must have some settlement of that kind, had you not?

A. I did not put it in those words.

Q. You were very firm?

A. I don't remember exactly, whatever we agreed upon was reduced to writing.

Q. Please examine this paper and see if your signature appears on that?

A. Yes sir, this is the memoranda of February 1913.

(Paper is marked Exhibit No. 63.)

Mr. Robertson: No objection to it. Your Honor.

Mr. Hite: We offer Exhibit No. 63 in evidence. (Reading same to the jury.)

(A copy of Exhibit No. 63 is attached hereto and made a part hereof.)

Q. Now at the time that you went out to Topeka in October, 1913, had the Stein-Bloch Company shipped any fall goods?

A. That calls for the shipment of spring goods, Mr. Hite. We shipped the spring goods to him in February after making that agreement, and they only paid the thousand dollars in July on that spring shipment.

Q. I didn't ask you that Mr. Guggenheim; you will have abundant opportunity to make your explanations.

Mr. Robertson: I object to counsel's arguments and statements. The Court: Go on and ask the question.

Q. I am asking you Mr. Guggenheim of the time you went out to Topeka in October, 1913 and got this agreement from Mr. Badders if you had shipped any fall goods?

A. I don't know.

Q. You don't know?

A. I have no knowledge.

Q. Don't you know as a matter of fact Mr. Guggenheim that the Badders Clothing Company's order for fall goods had been held up?

A. No.

Q. You don't know that?



A. I have no knowledge of that fact.

Q. You have no knowledge even from investigating the books and accounts of the company, have you?

A. I know that I found that the Badders Clothing Company had asked us in June to cancel a portion of their fall order; that we had declined to do so, and that we afterwards did.

Q. And you had not shipped the goods, however, at the time this agreement in October was made?

A. I have no knowledge.

Q. Don't you know Mr. Guggenheim that after the Badders Clothing Company paid you twenty five hundred dollars that you sent on the goods that had been ordered?

A. I have no knowledge of that fact.

Q. You have no knowledge of that fact?

A. The ledger will show that.

Q. Now the time this agreement in October 1913 was made, state whether or not several agreements had not been suggested to Mr. Badders and he had been asked to sign them, different from this one?

A. If there were any agreements submitted to Mr. Badders they resolved themselves into this one.

Q. And this one, you say, was signed some two weeks after 605 you went away?

A. It was mailed to the Stein-Bloch Company.

Q. You left the matter in the hands of McClintock and Quant to come to an accommodation about these contracts, did you not?

A. I assume I did.

Q. Now about these cancellations that you speak of, I understand you to say that you do know in June, 1913, the Badders Clothing Company requested the Stein-Bloch Company to cancel?

A. I only know, I only get the information from our files because in the previous examination I testified I knew nothing about it, and you insisted that I should know, so I got the information.

Q. You are testifying here in answer to the government's questions as to what you learned from the files pretty generally, aren't you Mr. Guggenheim?

A. No I am not, I remembered that particular question and looked it up.

Q. But when you testified as to how much the Badders Clothing Company owed the Stein-Bloch Company you were giving that from——

A. From our books of accounts.

Q. Yes sir. And this same information about the cancellations of June, 1913, you obtained in the same manner?

A. From our files, yes sir.

Q. Now after you had refused to cancel you then refused to ship the goods, did you not?

A. No, I only know that we didn't ship the goods; I saw from our records we had cancelled; I have no personal knowledge, simply saying that from what I learned from the files.

Q. Do you know whether Stein-Bloch & Company ever notified

Mr. Badders of the Badders Clothing Company that they were going to cancel some of his order?

A. I learned that from the files by looking this other matter up.

Q. Have you a copy of the letter written by the Stein-Bloch Company to the Badders Clothing Company cancelling some of the order?

A. I haven't it with me, may be in the possession of some  
606 of the officers here.

Q. Can you procure that letter Mr. Guggenheim?

A. I don't know.

A. Will you endeavor to?

A. Our papers have been dissipated and scattered around so much I don't know where they are.

Q. In February, 1913, when you were here you say you saw a statement of the condition of the Badders Clothing Company prepared by Mr. Badders and Mr. Frankenstein showing a loss of about one thousand dollars?

A. I didn't make any such statement; I said they showed me some figures showing a loss of about a thousand dollars.

Q. Now what do you mean by that?

A. They showed me at the time their capital was impaired something like nine hundred dollars.

Q. Their capital at that time was how much?

A. Twenty five thousand dollars.

Q. And their capital was then impaired, according to those figures, about nine hundred dollars?

A. About nine hundred dollars.

Q. Now you said, as I understand it, Mr. Guggenheim on your direct examination that they had been doing a business of about ninety thousand dollars on twenty five thousand dollars capital stock?

A. Yes.

Q. And you told them that wouldn't do?

A. I told them that wouldn't do.

Q. From these figures that they gave you did you ascertain they owed anybody else but the Stein-Bloch Company?

A. They told me they were discounting all their bills but the Stein-Bloch Company.

Q. And the Stein-Bloch Company was the only one they owed?

A. They put it in a different way.

Q. Did you make any inquiry to find out if they owed other bills?

A. I did not.

Q. But you insisted on getting the amount of the increased  
607 capital all paid to the Stein-Bloch Company did you not?

A. Yes sir.

Q. Now at that time Mr. Frankenstein was leaving the Badders Clothing Company was he not?

A. He was not.

Q. In February, 1913?

A. As far as I know that was the first time any conversation came up as to whether he might not go out.

Q. Wasn't that matter discussed and arranged between you, Mr. Frankenstein and Mr. Badders at that time?

A. No, in the event of his going out that agreement was made; if ~~Mr.~~ Badders took over Mr. Frankenstein's interest we would do so and so.

Q. Please examine exhibit No. 63 and see whether there is anything in that agreement or that memoranda that indicates that there was any question about Mr. Frankenstein having already gone out?

A. This is simply a memoranda.

Q. That memoranda was that Mr. Badders should give you those notes, was it not?

A. Yes, he should give us, if he went out——

Mr. Robertson: Objected to as not the best evidence, and not cross examination.

Mr. Hite:

Q. Do you know of the fact Mr. Frankenstein had endeavored to buy out Mr. Badders?

A. I have no knowledge of that.

Q. Weren't you shown a telegram received by Mr. Badders when he was in Rochester, New York, from Mr. Frankenstein?

A. Not that I remember; I have already testified previously that I have no recollection of——

The Court: Well, we will not repeat it; when a question has been once answered it is quite enough.

Mr. Hite:

Q. Do you know of the circumstance of Mr. Badders being in Rochester in February 1913?

A. No I do not.

608 Q. In your direct examination there was something said by you relative to talk there in February 1913 about Mr. Badders buying out Frankenstein, or the other way around?

A. In Topeka?

Q. Yes sir?

A. You asked me if I recollected Mr. Badders being in Rochester.

Q. Coming back to Topeka, was there some talk of that kind?

A. Some talk generally, I don't exactly remember what that talk was.

Q. During 1912, the account, as I understand, was running along normally?

A. Normally, yes sir.

Q. You didn't go out to Topeka at all?

A. I don't recollect being there.

The Court: He has said that Mr. Hite two or three times; it is not necessary to keep repeating these questions and getting the same answers over and over again, in the trial of this case.

Q. Mr. Guggenheim I now hand you a telegram and will ask you if you ever saw that before?

A. No sir.

Q. Did you not at or about the date of that telegram hand it to Mr. Badders?

A. If I never saw the telegram I could not have handed it to Mr. Badders.

Q. You never handed it to him then?

A. No.

(Telegram marked Exhibit No. 64 for identification.)

The Court: He said so and said it twice.

Mr. Hite:

Q. You say when that ten thousand dollars was received by the Stein-Bloch Company the proceeds of the sale of the increased capital stock, that you allowed the Badders Clothing Company the discount on their purchases?

A. My recollection is it was received in two amounts.

Q. Whenever and however it was received, you allowed the discount?

609 A. I learned that from the books of account.

Q. Did not the Stein-Bloch Company charge them interest?

A. That would be the method, to charge them interest for the elapsed time and give the usual cash discount.

Q. And as a matter of fact they didn't get an actual discount from the face of the bill?

A. Oh but they did.

Q. Do you know how much it was?

A. I don't know, the ledger will show that.

The Court: You would charge interest for the past due account, add that to the amount and then allow the discount?

A. Let me explain; we shipped goods, for instance, the first of February; we date those bills all as shipped on the 15th day of May; we allow on the 15th day of May cash discount of nine per cent if paid within ten days; if not paid the bill until the first of January, charge at rate of six per cent per annum for elapsed time and give them nine per cent discount.

Q. Calling your attention to Exhibit No. 30?

A. Yes sir.

Q. When the Stein-Bloch Company received that letter enclosing the list of stockholders, state whether or not there was any answer made to it by any member of the Stein-Bloch Company?

A. This came to me personally and my recollection is that I wrote Mr. Badders a congratulatory letter.

Q. Did you, or any person in the Stein-Bloch Company, so far as you know, make any investigation to ascertain whether the persons stated in this list had actually subscribed for a share of the capital stock?

A. We had every confidence in Mr. Badders.

Q. I didn't ask you that Mr. Guggenheim; please answer the question?

The Court: Did you make any injury?

A. No sir.

Mr. Hite:

Q. Mr. Guggenheim you have testified in answer to questions by the government that the Stein-Bloch Company has not contributed anything to the bankruptcy matter?

610 A. I did not so testify.

Q. Did you not testify that the Stein-Bloch Company had nothing whatever to do with the bankruptcy proceedings?

A. Nothing to do with their commencement.

Q. Nothing to do with their commencement?

A. Yes sir, shall I proceed?

Mr. Robertson: Go ahead.

A. After the bankruptcy proceedings had commenced it was established that funds were necessary to properly investigate the affairs and we then subscribed five per cent of our account for a fund to investigate the bankruptcy and to locate Mr. Badders.

Q. When did you make that subscription?

A. That subscription to the best of my knowledge was paid after I had returned from the bankruptcy proceedings. That is the best of my knowledge.

Q. Are you a member of the National Association of Credit Men?

A. I am not.

Q. Is any member of the Stein-Bloch Company?

A. Not to my knowledge.

Q. Do you know whether the Stein-Bloch Company itself belongs to that association?

A. I do not.

Q. You don't know, that what you mean?

A. They would have no occasion, the Stein-Bloch Company, to belong.

Q. But do they or do they not?

A. They do not to the best of my knowledge.

Q. To whom did you make this contribution of five hundred dollars?

A. To McClintock & Quant.

Q. Sir?

A. To McClintock & Quant.

Q. Of Topeka?

A. Of Topeka, our attorneys.

611 Q. Was that contribution made in answer to any circular letter received from them?

A. I believe it was.

Q. Have you a copy of that circular?

A. I have not.

Q. Did you ever have a copy of it?

A. I don't recollect; I must have had it, otherwise would not have sent the contribution.

Q. Where is it?

A. I don't know.

Q. Is it in the Rochester office?

A. Not to my knowledge; all of our papers in this case have been sent out around to the different proceedings; I don't know where the papers are.

Q. Have you turned any such paper as that over to the government?

A. No sir, not to my knowledge.

Mr. Robertson: We have them in the office.

Mr. Hite:

Q. I understood you to say before the recess Mr. Guggenheim that you had never had any occasion to doubt the truth of Mr. Badders' statement that he had taken this stock of the Marshall Clothing Company and had sold out the old stock and paid his debts and had some money left?

A. That is my recollection of it.

Q. Now in furnishing this contribution for investigating Mr. Badders, did you investigate that question as to what he had done with the stock that he sold in 1911?

A. We were not interested whatsoever in that stock.

Q. You were not interested in that.

A. We were not creditors.

Q. It was on the basis however of Mr. Badders' statement to you of what he had done at that time that you extended the credit and opened the account, was it not?

A. Yes sir.

Q. Was it not also because of Mr. Frankenstein's association with Mr. Badders?

A. Together, yes.

Q. Sir?

A. Together, yes, one built up the other.

Q. After October 1913 when you got this agreement with reference to the account, when did you next go to Topeka?

A. On the 26th of December, same year.

Q. On the 26th of December same year; did you arrive there on that day, the day after Christmas, or leave Rochester on the twenty sixth?

A. I left Rochester on the twenty-sixth.

Q. What was the immediate occasion of your going to Topeka at that time?

A. The immediate occasion was that a payment was due on the twentieth of December and was not paid; Mr. Badders had sent us a letter and had forgotten to enclose the check supposed to be enclosed, and if my recollection is right Mr. Badders sent us a telegram also along about that date asking some one to come.

Q. In that telegram Mr. Badders referred to some veiled threats made by McClintock & Quant; do you know anything about those threats?

A. As I was not present in Topeka naturally I would not know that.

Q. Have you been told since what they were?

A. I have not.

Q. Had your account been placed in McClintock & Quant's hands at that time; had they any authority from the Stein-Bloch Company to ask Mr. Badders for any money?

A. I assume that we had told McClintock & Quant that we had not received that check.

Q. When did you tell them that?

A. Why we must have told them after we received Mr. Badders' letter of the twenty third, or something like that, in December; we must have wired them.

Q. You must have wired them that you didn't get the money?

A. Must have.

Q. And did you give them instructions to go after Mr. Badders?

613 A. No sir.

Q. Well when you got this telegram from Mr. Badders telling you McClintock and Quant were making veiled threats did you answer that telegram?

A. I have no recollection of it.

Q. You immediately got on the train and went out to Topeka?

A. Went out to Topeka that night.

Q. Had you heard from McClintock & Quant with reference to this collection?

A. I have no recollection of it.

Q. Well what then was it that sent you out there if the matter had been placed in McClintock & Quant's hands?

A. Mr. Badders' telegram.

Q. That threats were being made against him?

A. I think Mr. Badders telegraphed, which telegram is somewhere in the courts, asking us to come there.

Q. I hand you, referring to Exhibit No. 58, Mr. Guggenheim, being a telegram which appears to have a stamp on it of your house of December 26, 1913?

A. This is the telegram I referred to.

Q. Is there anything in that telegram that makes a request for you to come out there?

A. No not directly.

Q. Well is there anything indirectly there?

A. Well, it might be so inferred.

Q. Well, what is it in this telegram?

The Court: Read the telegram and let the jury see what it is.

Mr. Hite: It has been read Your Honor.

The Court: Well don't discuss it then.

Mr. Hite: I was asking you Mr. Guggenheim to state now what it is in that telegram from which you inferred that Mr. Badders wanted you to come out?

A. Take the three things in connection, that he had sent us

a letter and stating he enclosed a check, which he forgot to enclose, and we advising Mr. McClintock of that fact, and then Mr. Badders wiring us he does not understand Mr. McClintock's request, 614 and we probably not having made any request to Mr. McClintock, I no doubt came right out here to straighten the thing out, that is probably the reason for the thing.

Q. That is your answer to this?

A. That is my inference.

Q. Yes. Mr. Guggenheim, why is it that when you got this letter in which you say that Mr. Badders forgot to put the check in, did you not telegraph him there was no check in that letter?

A. We may have telegraphed him.

Q. Well why didn't you do it?

A. Me personally?

Q. Yes?

A. I don't send telegrams personally for the whole house, we have a large establishment; the clerks do that.

Q. The matter was referred to you?

A. Referred to our financial department.

Q. Well, didn't it come to you?

A. Came to me in the regular course of business.

Q. And you don't know whether you sent a telegram to Mr. Badders or not?

A. No.

Q. But your best recollection is you did telegraph Messrs. McClintock & Quant?

A. I say that we communicated with McClintock and Quant and on account of dates running so close together it must have been by wire.

Q. Now up to the time of your visit there in October, 1913, you had never had any occasion to use an attorney in your dealings with the Badders Clothing Company?

A. Absolutely none.

Q. Was there anything else Mr. Guggenheim that induced you to go out to Topeka, leaving Rochester on the 26th of December, 1913?

A. No.

Q. Had you heard of any attachment suits being brought against Mr. Badders?

A. I didn't learn that until I got there.

615 Q. Are you sure about that?

A. I think McClintock did wire that there was an attachment suit.

Q. When did he wire you that?

A. It must have been just about that time.

Q. Isn't that the reason you went out there?

A. No sir.

Q. Have you the telegram that you think you received from McClintock and Quant about these attachments?

A. I haven't it with me, may be in the court.



Q. Have you any recollection of having turned it over to the government?

A. We turned over all our papers.

Q. All of them?

A. Not to the government, to McClintock and Quant, whichever way they have been subsidized, I don't know.

Q. You know whether McClintock & Quant have turned any of your papers over to the government?

A. I don't know anything about that.

Q. Did you tell them that they might do so?

A. I don't know.

Q. Have you given McClintock and Quant instructions to furnish the government with any evidence in this case?

A. I have had no meeting with McClintock and Quant since this case started.

Q. I would like for you to answer that question Mr. Guggenheim; I did not ask you the question as to whether you had seen them.

Question read.

A. No sir.

Q. Do you recall what day of the week Christmas 1913 fell upon?

A. I believe it was Thursday.

Q. You left Rochester on Friday?

A. Friday.

Q. And arrived in Topeka Sunday?

A. Sunday afternoon.

Q. Did you see Mr. Badders Sunday?

616 A. I did not see him on Sunday.

Q. See Mr. McClintock?

A. No sir.

Q. Call him up?

A. No sir.

Q. Do you know whether he knew you were coming?

A. I don't know.

Q. Had you telegraphed him you were on the way?

A. I don't think I did.

Q. You saw Mr. Badders Monday?

A. I don't recollect if I did, I assume I did.

Q. And that was December 30th was it not, the day before the close of the year?

A. Thirty one days in December.

Q. I said the day before the close of the year would be the 30th, wouldn't it?

The Court: We will not stop to discuss that either; leave that to the jury to say.

Mr. Hite:

Q. When did you see Mr. Badders after you arrived in Topeka, how long a time?

A. Why I saw him to the best of my recollection on Monday.

Q. On Monday?

A. Yes.

Q. Whereabout did you see him?

A. I assume I saw him in the store.

Q. Who was with you when you saw him the first time?

A. I don't recollect any one was with me.

Q. Did you take Mr. McClintock up there?

A. I did not.

Q. You are not positive?

A. No, I am not positive.

Q. You might have taken him?

A. Yes.

Q. Did you then ask Mr. Badders why he had not enclosed this check?

617 A. He told me he had mailed the check to Rochester, and I asked him to give me a duplicate or a New York draft, I have forgotten which, and he refused to do it.

Q. What did he say?

A. I don't recollect the substance of his remarks, simply that he wouldn't do it.

Q. You didn't get the check?

A. I didn't get the check.

Q. When did you get this check he had mailed to Rochester.

A. I got it back on Tuesday.

Q. Did you get a letter with it?

A. I don't recollect; I may have got a letter, saying I enclose check and that was all.

Q. Who was the letter sent by?

A. Stein-Bloch Company.

Q. What person in the Stein-Bloch Company?

A. I don't know.

Q. Do you know why that check was not deposited in the regular course of business?

A. Because I had instructed to send it to me.

Q. You had told them to send it?

A. Yes sir.

Q. Had you received any information before you left Rochester Mr. Badders was mailing a check to you?

A. Yes, we received a notice the check had been mailed on the 20th.

Q. The one that was omitted from the letter?

A. Yes sir.

Q. And that hadn't arrived however when you left?

A. No sir.

Q. Was there a letter from Mr. Badders of the Badders Clothing Company in regard to the check?

A. You mean the second check, the missing check?

Q. The first one that you saw?

A. If there was I didn't have the letter, I was in Topeka.

Q. As I understood, this check was sent to you from Rochester?

A. Yes sir.

618 Q. Was there a letter from Mr. Badders sent with that check?

A. Not to my knowledge.

Q. Nothing but just the plain check in a plain envelope?

A. I don't say so, I say whatever was enclosed, I don't know; there may have been a letter from the Stein-Bloch Company.

Q. And there may have been a letter from Mr. Badders?

A. Not that I recollect.

Q. And you don't remember what was in the letter from the Stein-Bloch Company?

A. I do not.

The Court: Well, I think we may have gone about as far as we can go into matters of this sort; he got the check and he stated when he got —. The check was produced, duplicate of it was produced and read in evidence here.

Mr. Hite:

Q. What time on Tuesday did you get this check?

A. I don't know the time of the day.

Q. Afternoon was it not?

A. I wouldn't say so.

Q. Did you present the check to the German Bank or whatever bank drawn on that day?

A. Yes sir.

Q. The day you got it?

A. Yes sir.

Q. Did you leave the check at the bank?

A. Yes sir.

Q. How long did it stay at the bank?

A. Well it was there that day.

Q. Did you go down there the next day, to the bank?

A. I was there every day for several days.

Q. Well were you there the next day?

A. I don't now whether I was there the next day or not, I won't be sure I was.

Q. Were you in the German Bank Building when Mr. Badders came in to see about that check?

A. Yes sir.

619 Q. Whereabouts were you.

A. In the rear room.

Q. Hear what Mr. Badders said to Mr. Mueller?

A. Yes sir.

Q. Did you hear him say to Mr. Mueller he was ready and willing to pay that check if it came through the proper channels?

A. Yes sir.

Q. Did you hear him say he had the money in his pocket to pay that then?

A. I didn't hear that.

Q. Do you think you could have heard all that was said?

A. I possibly could, I was in the rear room, a partition in between.

Q. At the time you were in this rear room did you have this check in your pocket?

A. I did not.

Q. Where was it?

A. In the bank.

Q. Who had it, Mr. Mueller have it; did you hear Mr. Badders ask Mr. Mueller for the check?

A. I don't remember.

Q. To refresh your recollection, didn't Mr. Badders say to Mr. Mueller, please give me that check?

A. I don't recollect.

Q. And isn't it a fact Mr. Guggenheim you had the check at the time Mr. Mueller was talking to Mr. Badders?

A. I did not.

Q. When did you come out of the rear room where you were sitting as to the time Mr. Badders was there?

A. I didn't come out of the rear room until after Mr. Badders had left the bank.

Q. Why not Mr. Guggenheim?

The Court: Oh we will not go into that; it don't make any difference; he was there about a check; the check was in the bank, and he says Badders came there and asked if the check was there and they said yes, and he said he would pay it if it came through the  
620 regular channels but he wouldn't pay it as it was, is all I understood you to prove.

Mr. Hite: We desire to interrogate this witness as to why in a matter he was vitally interested in, he didn't come out and ask Mr. Badders about the check in the presence of the bank.

The Court: You may state.

A. I left the check with the bank on which it was drawn, assuming it would be paid from Mr. Badders' account if he had one there.

Q. And you say you didn't hear Mr. Badders say he had the money in his pocket to pay that check?

A. I don't recollect it at this time.

Q. You won't say he didn't say that?

A. I won't say so, no.

Q. Now there was another check for the same amount was there not Mr. Guggenheim?

A. Yes sir.

Q. Where did you get that second check?

A. That was mailed to me from Rochester again.

Q. And I understand when you got this second check you turned over the first to Mr. Badders?

A. Not at that time; I turned it over before I left Topeka, having two checks of equal amount and both to pay the same debt, one I turned back to him.

Q. The other one you held?

A. The other is in evidence.

Q. I mean the Stein-Bloch Company still holds it?

A. Yes.

The Court: That check was read here?

A. Yes.

Mr. Hite:

Q. Now when you got that second check did you get a letter from Mr. Badders accompanying that?

A. No.

Q. Is it not a fact Mr. Badders issued the second check upon the express condition that that was to be sent through the regular clearing house channels, isn't that true?

621 A. I have no knowledge of that fact.

Q. Didn't you so testify on your direct examination Mr. Guggenheim?

A. That Mr. Badders said so?

Q. Yes, that Mr. Badders told you that the second check was issued upon condition that it would go through the regular clearing house channel?

A. He said if it had come to him through the regular clearing house channel he would pay it.

Q. And didn't you testify here on your direct examination that Mr. Badders said he issued that check upon that condition?

A. Well we agreed to no conditions.

Q. I didn't ask you that; didn't you so testify Mr. Guggenheim?

A. I have testified as to what Mr. Badders told me.

Q. That he had issued the check upon the express condition that it was to come to him through the clearing house?

A. He told me if the check had come through the regular channels he would have paid it.

The Court: Say anything about why he wanted it to come through the clearing house?

A. No.

The Court: Do you know any reason why it should come through the clearing house?

Mr. Hite: Beg Your Honor's pardon, and object to this as not proper.

The Court: I do not want to interrupt counsel. I am trying to be as liberal as I can, but I do not see how it becomes necessary to find out whether a check was presented in one way or another at a bank and refused payment there.

Mr. Hite: I think Your Honor will see as it is developed.

Q. Now Mr. Guggenheim at the time this check was presented at the bank did you know that Mr. Badders' account had been attached, his bank account?

A. At this bank?

Q. No sir, at any bank?

622 A. Yes sir, I had a talk with Mr. Badders in reference to that.

Q. You knew suits were pending against him did you not?

A. I knew an attachment had been made on the bank of Topeka and I had ascertained that the Bank of Topeka—

The Court: You need not state without counsel asks you. He asked you whether an attachment had been had, and do not state what the attachment was for.

Mr. Hite: You have answered my question Mr. Guggenheim.

Q. Didn't Mr. Badders say to you that of course you knew that he had not deposited any money at the Bank of Topeka?

A. No.

Q. Didn't he tell you that?

A. He said he had a large sum of money at the Bank of Topeka.

Q. You say he did?

A. Yes sir.

The Court: And that that large sum had been attached, told you?

A. Yes sir, at the Bank of Topeka.

Q. When did he tell you that?

A. During the course of my conversations of that week; that is the reason why I got the check on the other bank.

Mr. Hite: We are not asking for the witness' reasons.

The Court: Is that the reason he stated he gave a check on another bank, because the Bank of Topeka account had been attached?

A. That was the reason the check was on the German Bank.

Mr. Hite:

Q. Mr. Guggenheim you have testified concerning this transaction on a previous occasion, have you not?

A. Yes sir.

Q. I will ask you if on the occasion of your previous testimony you did not say that Mr. Badders told you that he had—that his sales had amounted to some thirty odd thousand dollars; and that you asked him where the money was, was it in the Bank of Topeka?

A. Yes sir.

623 Q. And did you not there say that Mr. Badders said you know of course it is not in the Bank of Topeka?

A. Yes sir.

Q. You so testified on the previous occasion?

A. Yes sir.

Q. Then as I understand it Mr. Badders told you this money was not on deposit at the Bank of Topeka?

A. Mr. Badders had previously informed me that he had large sums of money at the Bank of Topeka which had been attached.

Q. And he afterwards told you that he didn't have any money on deposit at the Bank of Topeka, didn't he?

A. That attachment suit was still pending.

Q. But I am asking you as to the fact of what he told you?

A. Yes sir.

Q. At first he told you he had money on deposit at the Bank of Topeka and afterwards you say he told you he did not have any money on deposit there?

A. Oh no, you are twisting it; he told me at one time, at one of the first interviews, that he had a large sum of money on deposit at the Bank of Topeka.

The Court: State the amount?

A. No. That Rosenwald & Weil had attached that money for their account which I believe was eight hundred dollars, and I asked him why he didn't give them eight hundred dollars and pay his bills with the balance; he told me he was going to sue that concern and the measure of his damages would be larger; I believe you will find that is my testimony.

Q. Did you not testify, however, on the occasion referred to, when you said, "Where is the money," Mr. Badders said to you; on the occasion when you asked him, "Where is the money, is it in the Bank of Topeka," he answered you, "No, you know it is not in the Bank of Topeka?"

A. I may have so answered.

The Court: What was the difference in time between this first conversation when he said he had money, and the second time when he said he hadn't it there?

A. I was in Topeka about ten days.

624 The Court: And so now what time elapsed between the time he said the money was in the Bank of Topeka and when he told you it was not there?

A. All within ten days.

Mr. Hite:

Q. Did you make any threats of attaching the stock of the Badders Clothing Company, sir?

A. No sir.

Q. Did you not make the statement to Mr. W. A. Byers in the Badders Clothing Company during your visit there in December and early in January, 1913, and 1914, that if Mr. Badders didn't show up in five minutes you would close up the store? Answer that yes or no. Did you make that statement, or that in substance?

A. I may have made such a statement in substance. I want to explain it. I had been making appointments with Mr. Badders which he did not keep; I finally said to Mr. Byers, I am not in the habit of having people make appointments that they do not keep; if Mr. Badders don't show up in five minutes I will do something, and Mr. Badders showed up.

Q. Didn't you say in place of saying, "I will do something," that "I will close up the store."

A. I had no way of closing up the store.

Q. Didn't you say that?

A. I did not, not in substance.

Q. How often did you send McClintock and Quant down to see Mr. Badders?

A. I didn't send them at any time, they were my attorneys.

Q. Do you know whether they went down to see him?

A. I have no knowledge as to how many times.

Q. Do you know how many claims of other persons they had in their possession?

A. No.

Q. Did you ask them?

A. They may have told me they had some, I don't know.

Q. Mr. Guggenheim do I understand your testimony to be that your attorneys on that occasion did not tell you what other  
625 claims besides the Stein-Bloch Company they had for collection?

A. They said they were getting claims, whether they told me their names or not I don't know.

Q. Now I understand your testimony to be that during November, some fifty or sixty days before, that merchants all through the east had applied to the Stein-Bloch Company as to the Badders Clothing Company's standing, is that true?

A. Yes sir, that is true.

Q. And you had recommended the Badders Clothing Company to these companies?

A. Relying on Mr. Badders' statements we did.

Q. I didn't ask you that Mr. Guggenheim.

The Court: Did you make the reference?

A. Yes sir.

Mr. Hite:

Q. When you came out to Topeka in December, getting there on the 29th or 30th of December had you notified any of these merchants in the east what you were doing?

A. No sir.

Q. Why didn't you notify them Mr. Guggenheim?

A. Because that is not customary. I didn't know what I was going to do in Topeka; I am working for the Stein-Bloch Company.

Q. Did Mr. Badders refer to the Stein-Bloch Company at the request and with the consent of the Stein-Bloch Company?

A. With the consent of the Stein-Bloch Company.

Q. And at its request?

A. We did request him at times, yes sir.

Q. So when he referred these merchants in the east to your office he was doing something that you had told him he should do and might do?

A. Something he might do, not should do.

Q. You had not told him to do it?

A. We may have written him in the ordinary course, you may refer or should refer or something.

Q. What do you understand Mr. Guggenheim by telling a  
626 man you should do so and so?

A. We were interested in the Badder- Clothing Company's success; we permitted him to refer to us in that manner; we get hundreds of requests in the course of a month.

Q. The Badders Company stationery indicated it was a Stein-Bloch store, did it not?

A. Most of our customers have the Stein-Bloch's name on their stationery.

Q. I am asking you if the stationery used by the Badders Clothing Company didn't indicate that was a Stein-Bloch store?

A. No sir, that it was a store handling Stein-Bloch goods.



Q. That was the prominent thing on the letter paper, was it not?

A. Yes sir.

Q. Did you not have over this store building a big electric sign paid for by Stein-Bloch, Stein-Bloch Clothing?

A. Yes sir.

Q. State whether or not the Stein-Bloch Company required Mr. Badders or the Badders Clothing Company to send daily reports of the condition of the business?

A. We did.

Q. State whether or not the Stein-Bloch Company did not require Mr. Badders to report to them the purchases and sales that he would make?

A. We asked him to report his spring sales, but he did not do it.

Q. I didn't ask you that; did you make that requirement of him?

A. I don't recollect; the sheet it was on is in evidence here; whatever the sheet called for he was required to do.

Q. I am not asking you that.

The Court: Let me ask you and see if we can't get along; did you request them to send you a statement daily of their business?

A. We have a blank which we asked them to send daily.

Mr. Hite:

627 Q. Do you ask all the customers of the Stein-Bloch Company to do that?

A. We ask a number.

Q. You only ask those where you have invested money with them?

A. Where we are interested in them, yes sir.

Q. And that means where you have put up money to help somebody else go into business? Doesn't it?

A. Certainly.

Q. State Mr. Guggenheim whether to all intents and purposes the Stein-Bloch Company was not Mr. Badders' partner in this enterprise?

A. No we were not.

The Court: I don't know whether that is objected to or not; any allegation of partnership here; the question is, did he owe Stein-Bloch Company money at a particular time, and did he pay it; and if not, why didn't he pay it; that is the main question.

Mr. Hite: We ask for an exception to the remark of the court.

The Court: Yes, no use in going into all of this. Exception to my remarks are allowed.

Mr. Hite:

Q. Mr. Guggenheim, please examine the paper I now hand you and state if that was signed by you?

A. Yes sir, that is my signature.

Q. Please examine this other paper I hand you and state if that was signed by you?

A. Yes sir.

Mr. Hite: Papers identified as exhibit- Nos. 65 and 66.

Mr. Hite: We offer in evidence Exhibit No. 65. Reading to the jury.

(A copy of Exhibit No. 65 is attached hereto and made a part hereof.)

Mr. Hite: We offer Exhibit No. 66 in evidence.

The Court: I will allow it in evidence subject to your objection.

628 Mr. Robertson: I have no objection.

The Court: I will receive it and rule on it tentatively, doing that for the purpose of saving time.

Mr. Hite: Reading Exhibit No. 66.

(A copy of Exhibit No. 66 is attached hereto and made a part hereof.)

Mr. Hite:

Q. Mr. Guggenheim I will ask you at the time you signed this paper marked Exhibit No. 65, dated December 31, how long had you been in Topeka?

A. I must have been in Topeka two or three days.

Q. Had you had a talk with Mr. Badders at the time you made this demand?

A. It was after he refused to pay the check.

Q. It was after he refused to pay the check; was it the same day?

A. I don't remember at the present time; I reached Topeka on Monday, had the check on Tuesday and I presume after the refusal to pay the check, by advice of counsel I signed those papers.

Q. You didn't wait for the second check to come?

A. I presume not.

Q. At that time had you made any examination of the stock of goods?

A. I had been in the store.

Q. Had you looked around to determine how much stock was there?

A. I talked with Mr. Badders at the time.

Q. Did you talk with anybody else?

A. I talked with Mr. Burdick one time and another.

Q. Looked all around the store?

A. Yes, saw the goods in the store.

Q. You had asked Mr. Badders about what the sales were?

A. Whether at that time or not I don't know, it was during that period of time.

Q. Did you believe at that time that the Badders Clothing Company were solvent or insolvent?

629 A. Mr. Badders told me they were solvent.

Q. I am not asking you that; I am asking for your opinion?

A. My opinion was they were solvent.

Q. Your opinion was they were solvent on December 31?

A. Yes sir.

Q. Did you know at that time that Mr. Badders and his employes had just been engaged in a sale?

A. Certainly.

Q. You knew they had been busy from the fifth of December up to and including the time you were there, did you not?

A. I did not know how long the sale had continued.

Q. Did you know at that time the books had not been posted up?

A. I did not.

Q. Did you make any inquiry?

A. I asked for a statement.

Q. What did he say?

A. Mr. Badders said he couldn't make a statement at that time.

Q. Well, Mr. Guggenheim from your own experience you knew he couldn't make a statement at that time?

A. I knew that he should know the condition of his business, that he could make a general statement, which he did.

Q. Right after this sale?

A. Certainly.

Q. You knew at the time Mr. Guggenheim what the effect of a payment of your bill would be if he was not solvent, didn't you?

A. In what way do you mean?

Q. In bankruptcy matters; answer the question please. Mr. Guggenheim did you or did you not know that?

A. If he paid the entire bill?

Q. Yes sir?

A. In what way do you mean?

Q. I ask you if you didn't know at that time the effect it would have, the payment of your bill, if the Badders Clothing Company was insolvent?

630 A. I am not a lawyer.

Q. I didn't ask you that?

A. I don't get the request you are getting at.

The Court: Let me see if I can't get the understanding, and the jury get the understanding; if your debt was paid and the concern was insolvent at the time you got your payment, you knew that if you took a preference by getting your payment, and the thing was insolvent, that the trustee would recover back from you the amount that you had?

A. Certainly.

Mr. Hite:

Q. You knew also, did you not Mr. Guggenheim, that would be an act of bankruptcy?

A. Not if he was solvent.

Q. But if he was insolvent, it would be an act of bankruptcy?

A. Why certainly.

Q. You weren't asking him to commit an act of bankruptcy, were you?

A. Why should I?

Q. Well, were you?

A. Certainly not.

Q. You knew also at that time Mr. Guggenheim the effect of an

attachment of his goods or the goods and property of the Badders Clothing Company if it was not released in five days, did you not?

A. I did not.

Q. You did not?

A. No I did not.

Q. You knew that Mr. Badders understood that Mr. McClintock was threatening him with bankruptcy proceedings, did you not?

A. I do not.

Q. Had you not received a telegram from Mr. Badders stating Mr. McClintock was threatening him with bankruptcy?

A. It does not follow that I know anything about it or that Mr. McClintock was.

Q. I didn't ask you that; I asked you if you didn't know Mr. Badders thought Mr. McClintock was threatening him with  
631 bankruptcy?

A. I can't read Mr. Badders' thoughts.

Q. You had read his words to that effect?

A. I had read his words to that effect, yes.

Q. You recall the circumstance of a trial in bankruptcy at Topeka?

A. Yes sir.

Q. You attended that trial?

A. Yes sir.

Q. Came at your own expense?

A. I assume so, yes.

Q. Charge it I mean to the Stein-Bloch Company expense?

Mr. Robertson: I object to this as immaterial.

The Court: What do you think this has to do with the case?

Mr. Hite: We think we have a right to show any bias or interest or prejudice on the part of the witness.

The Court: That you may do but you may not do it by showing he was present at a court proceeding, and that he was there for no other purpose than showing bias.

Mr. Hite: Only this, there was no special occasion for him to be there only that he wanted to go.

The Court: Suppose we admit he wanted to go; that he was there.

Mr. Hite: That is all I wanted him to admit.

Q. You wanted to be there, didn't you, Mr. Guggenheim?

A. I had to be there.

Q. But you did want to be there?

A. I came there to testify, certainly.

Q. And you wanted to testify?

A. I never want to testify.

The Court: I think I have indulged this examination about as far as I may go.

Mr. Hite: Does that mean, Your Honor—

The Court: Nothing else you wanted to ask him, so far as this particular matter, that is the end of it.

Mr. Hite:

Q. Mr. Guggenheim have you at any time been in con-

632 sultation with any member of the Rothschild house in Kansas City, Missouri, looking to their taking the Badders Clothing Company corner?

A. Mr. Rothschild——

Q. Answer that question yes or no?

A. Yes sir.

Mr. Robertson: I wish to object to that as not cross examination.

The Court: Sustained.

Mr. Hite:

Q. State if the Stein-Bloch Company was seeking to have some one besides the Badders Clothing Company take that store building up there in Topeka?

A. No sir.

Q. Did you in the inception of your connection, or the connection of your house with the Badders Clothing Company, take into consideration the desirability of that corner?

A. No.

Q. No questions were asked about that or inquiries made?

A. When I went there and looked at it I saw it was a good corner.

The Court (to Mr. Robertson): Is there anything growing out of this cross examination that you desire to ask about?

Mr. Robertson: There is one term that is often used here, and it seems the jury should know, counsel has played upon that term, as to what a season means among merchants.

The Court: I think this jury is exactly intelligent enough to know what a season is, and what a season is not. I do not think you may presume to go very extensively into that, on either side, thinking this jury does not understand what it is about.

Mr. Robertson: If Your Honor will permit, I want to ask that one question; I want to ask what he means by the expression in his clothing business, "A season."

The Court: He has stated he sold stock in the spring for fall and winter, and that in the winter he sold for the spring; that  
633 is all he stated; that has been stated over and over again.  
Stand aside.

(Witness excused.)

J. L. ADLER, called as a witness on behalf of the plaintiff, having been first duly sworn, testifies, as follows:

Direct examination.

Questions by Mr. Robertson:

Q. What are your initials?

A. J. L.

Q. Where is your business Mr. Adler?

A. Syracuse, New York.

Q. What is your business?

A. We are known as credit accountants or commercial adjusters;

I am advertising man, and we conduct sales of stock of merchandise.

Q. You are acquainted with Mr. Badders, the defendant?

A. Yes sir.

Q. How long have you known him?

A. Met him first about December 2, 1913.

Q. You conducted a sale for the Badders Clothing Company or at its place of business during December, 1913?

A. Yes sir.

Q. When did you begin that sale?

A. December 5, 1913.

Q. So far as your relations with it are concerned when did they cease?

A. At six o'clock on the evening of December 24th.

Q. If you know, stated what amount of cash was received during that sale, while it was conducted by you?

A. During my connection with it \$36,199. and some odd cents that I do not recall.

Q. When did you leave the store?

A. About six o'clock on the evening of December 24th.

Q. I hand you an Exhibit, a paper marked Exhibit No. 67.

A. Yes sir.

634 Q. Ask you to state if you know who prepared that?

A. I prepared this with the assistance of my associates.

Q. Was it submitted to Mr. Badders before being used?

A. Yes sir.

Q. I will ask you to state whether it had his approval or not before it was used?

Mr. Hite: I ask that the witness be required to state what if anything was said about it, so we can determine.

The Court: You have got an ad in a newspaper; you prepared it and your assistants helped you prepare it?

A. Yes.

Q. And before it was published you consulted Mr. Badders about it, did you?

A. Yes, we showed him the copy before it was put in the press.

Q. What did he say about it?

A. He made some minor corrections.

Q. Were the corrections he suggested made?

A. Yes sir, they were stricken out and corrected in accordance with his ideas, the way he wanted it done.

Mr. Robertson:

Q. Was it used in the manner corrected by him?

A. Yes sir.

Mr. Robertson: We offer Exhibit No. 67 in evidence.

The Court: Let him identify the other, if you have anything else there for him to identify.

Mr. Robertson: I think I can save time and space here by asking

him whether this same advertisement, Exhibit No. 67, was used in any other newspapers?

A. It was used in both the newspapers published in Topeka.

Q. What are the newspapers?

A. If I remember correctly the Capital and the Journal.

Q. Both daily papers?

A. Both daily papers, one morning and on- afternoon.

Mr. Harkless: If the court please, I would like to inquire what the purpose of the introduction of those things is?

The Court: Let them identify them, they have not offered them yet.

635 Mr. Robertson:

Q. I hand you a paper marked Exhibit No. 68, and ask you whether or not that was submitted to and considered by the defendant Badders before it was made use of?

A. It was.

Q. And state if you know what use was made of it?

A. It was published in the daily papers there.

Q. When?

A. I suppose the date given there, as near as I can remember, probably the day before this, it is dated there December 18th. I am not positive about that, I should say on the 17th.

Q. 1913?

A. 1913.

Q. I hand you a paper marked Exhibit No. 69 and ask you to state whether you ever saw the original of that or not?

A. I don't know whether I ever saw the original or not.

Q. Did you ever discuss the proposition of using that with Mr. Badders?

A. I had nothing to do with getting this up; this is not my work; Mr. Badders got this up himself and asked me what I thought of the idea of using it, and I thought it was a very good one; he prepared that himself.

Q. And was it used?

A. Yes sir.

Q. Where was it used?

A. It was used in both the daily papers in Topeka on the date, let me see here, December 21st.

Mr. Robertson: Now I offer Exhibit No. 67 in evidence.

The Court: Counsel asks for what purpose.

Mr. Robertson: For the purpose of showing the representations made by the defendant to the public at that time as to why a sale was being held, and for the purpose of showing such declarations as it contains; they were approved by him.

Mr. Hite: I don't think it serves it.

Mr. Robertson: And for any other legitimate purpose it may serve.

636 Mr. Harkless: That question I can't answer, but we certainly think it is wholly immaterial to incumber the record with that Your Honor. It is admitted the man was making a sacrifice sale, all understood it, and making the best advertisements they could.

The Court: I am glad that counsel suggests to the court that some things might incumber a record. Here is an advertisement that was put in at the instance of this party; I don't see myself what office it can serve. The question is, was there a sale, and if there was a sale, what did it amount to; and if it amounted to anything what became of it, and what became of the money that was realized; that is the main question; go on and read it, I will let it in even if it does incumber the record; I confess I don't see why the record should be incumbered with a lot of matter that does not seem to touch the matter here at trial.

Mr. Harkless: Defendant excepts.

Mr. Robertson, reading Exhibit No. 67.

(A copy of Exhibit No. 67 is attached hereto and made a part hereof.)

The Court: Is that the same thing in the other paper?

Mr. Robertson: Practically the same.

The Court: Allow same to be considered in.

Mr. Robertson: Offered in evidence Exhibits Nos. 68 and 69.

Mr. Harkless: We except to all the exhibits in reference to advertising as immaterial.

The Court: Overruled. Defendant excepts.

Mr. Robertson, reading Exhibit No. 69.

(Copies of Exhibits No. 68 and 69 are attached hereto and made a part hereof.)

(3:55, Recess of court for fifteen minutes.)

(4:10 P. M.)

Mr. ADLER (on the stand).

Questions by Mr. Robertson:

Q. Did you know Mr. Guggenheim at the time you were there?

A. I did not sir.

637 Q. What if anything was done so far as you know either by way of preparation for the sale, or after it was begun, in the way of either putting goods away where the public could not use them or shipping them out of the building and away from the place of business?

A. Nothing was done in any way that I know of at all.

Q. If such a thing was done, what, if anything, did you have to do with it?

The Court: He says he doesn't know anything about it. What is the use of repeating the question in a different form.

Mr. Robertson:

Q. Just explain very briefly to the jury how that sale was handled—



Mr. Harkless: Your Honor——

The Court: What do you want to prove about that; he had the sale, and says he conducted the sale; was there from a certain time to a certain time; sold the goods and realized a certain amount of money.

Mr. Robertson: I don't think myself it is very important.

Q. Did you get your pay for holding the sale?

A. Got part of it.

Q. What part of it did you get, and what part did you not get?

A. We had a contract with the Badders Clothing Company on a basis of six per cent commission on the gross amount of sales. Mr. Badders made up a poor mouth with us——

The Court: You need not say what he did; what did you get?

A. Got five per cent, accepted five per cent under protest.

Cross-examination:

The Court: Now please confine this cross examination to the examination in chief.

Questions by Mr. Hite: I will try to your Honor.

The Court: And I will try to observe it a little closer hereafter than I have heretofore done.

Mr. Hite:

Q. Mr. Adler you are of the firm of H. L. Gilmore and Company?

A. Yes sir.

Q. Member of the firm?

A. Yes sir.

Q. The business of that firm is to go out through the country and have these so-called sensational sales?

638 A. Wouldn't like to put it in that way sir.

Q. I don't mean to be offensive.

A. We conduct sales.

Q. You conduct sales, and they are conducted usually by previously advertising substantially as was advertised here?

A. Yes sir.

Q. Was it at your suggestion that the advertisement was headed the way it was headed?

A. I think so, to fit the conditions outlined to me by Mr. Badders.

Q. State whether or not in such sales it is customary to reserve the higher priced articles of clothing and similar articles?

A. No sir it is not.

Q. Was there any reservations in this sale or everything was to be sold?

A. Everything with the exception of one or two items upon which a merchant is prohibited from cutting the price.

Q. Society brand clothing.

A. No sir.

Q. Was that not reserved?

A. Not that I know of.

Q. Do you know of Mr. Badders having a talk with your associate Mr. Stern to the effect of reserving some of the clothing there?

A. I don't know it, no sir.

Q. I don't mean at the beginning of the sale, Mr. Adler, but along as the sale progressed, was there not some reservations made?

A. There were some suits taken out towards the end of the sale.

Q. And why was that?

A. I think Mr. Badders claimed they were too high priced.

Q. What was done with those goods?

A. A protest was made on our part it was not the proper thing to do; they were taken to the basement and after a consideration Mr. Badders agreed to let them be sold in the sale.

Q. But did not do so?

A. Yes, some of them were sold.

639 Q. But he did take them out, as you say, under your protest and put some of them in the basement?

A. Yes sir.

Q. State why he did that Mr. Adler?

A. I just stated he thought they were too high priced to go into the sale at the time.

Q. Did he not say he could not afford to sacrifice such goods as that?

A. I don't recall that statement.

Q. Anything in substance like that?

A. Probably some such statement as that.

Q. When you speak of the cash sales amounting to \$33,199. I understand you to mean that is the gross amount?

A. That is the gross amount, yes sir.

Q. That does not mean net after taking out the expenses?

A. No sir.

Q. About how many employes were there during the sale?

A. Well, that is a very difficult question for me to answer accurately; I believe at one time we had as many as seventy five or eighty sales people on the floor.

Q. Was the sale pretty well attended?

A. Yes sir.

Q. Did your firm conduct a previous sale at that same place before that time?

A. About two years previous, yes sir.

Q. Your methods in conducting those sales are somewhat uniform are they not Mr. Adler?

A. Well, in a way, yes sir.

Q. Of course changing with the various conditions you have to meet?

A. That is it.

Q. But in a general way they are conducted about the same way?

A. Yes sir.

Q. It was a sale under high pressure that you put over, wasn't it?

A. Yes sir.

Q. What if anything was said to you about selling goods  
640 at a profit, that there must always be some profit in the goods?

A. Why along that line the only thing I can recall that  
Mr. Badders said was that he didn't want to lose any money on the  
sale.

Q. Did not Mr. Badders say, in substance, he didn't want any  
article sold under cost?

A. I don't recall any such statement.

Q. Your recollection is only what you have stated?

A. Yes sir.

(Witness excused.)

FRED VOILAND, called as a witness on behalf of the plaintiff,  
having been first duly sworn, testifies, as follows:

Direct examination.

Questions by Mr. Robertson:

Q. What is your name?

A. Fred Voiland.

Q. Where do you live Mr. Voiland?

A. Topeka, Kansas.

Q. How long have you lived there?

A. Since 1887.

Q. What is your business?

A. Clothing business, retail.

Q. How long have you been in the clothing business there?

A. All my life practically.

Q. Is your business in what is known as North Topeka?

A. Yes sir.

Q. Are you acquainted with the defendant George S. Badders?

A. Yes sir I am.

Q. How long have you known him?

A. Five or six years, may<sup>be</sup> be seven years.

Q. Did you purchase some goods through him of the Badders  
Clothing Company on Christmas day of 1913?

A. Yes sir.

Q. Previous to that time what negotiations if any had you had  
in the matter?

641 A. I can only tell this in my own words.

Q. Sir?

A. I will have to tell it in my own words.

Q. Yes sir, that is the way to do it?

A. I met Mr. Badders on the street in the month of December. I  
can't tell just at what time, but it was during the progress of his  
sale, and he asked me if I was in the market for merchandise. I  
don't know that he used those words, but that is substantially what  
he asked me; and the conversation we had was that he asked me  
if I wanted to buy some merchandise and I told him I was always  
buying and selling; he said he expected to have some goods there  
he could offer me at a price and asked me if I would come and look

at them; I told him I would, and I did so; just how soon after that I can't recall, because I made no note of dates or anything of that kind.

Q. What was the result of those negotiations?

A. I bought some goods of Mr. Badders on the night of December twenty fifth.

Q. How did you come to be there on that day?

A. Mr. Badders called me that day, I was attending Masonic Lodge and it was on Christmas night, Christmas evening, after supper, I can't tell just the hour, he called me there, and we had bantered back and forth as to price, and never appeared to get to a price; I made several trips to Mr. Badders' store, I couldn't tell how many, but we were never able to agree upon a price.

Q. Previous to Christmas day were there any continued and unfinished negotiations pending?

A. Yes, might be said to be continued; I couldn't agree with him as to the price, and I left negotiations as they were; I supposed that they were concluded, finished, I couldn't buy it cheap enough and he wanted more than I wanted to give.

Q. When did you decide or think that negotiations had been concluded?

A. I can't recall just when; I first thought that——

Q. Was that previous to Christmas day?

642 A. I recall that on Christmas day at that time I was of the opinion that negotiations were ended practically.

Q. Tell what occurred on Christmas day; go ahead and detail it in your own way?

A. He called me up, I can't state this in continuity because it is fragmentary in my mind at this time; on Christmas day he called me up, I was attending Masonic Lodge, and he asked me if I would come and meet him at the store; I told him I could and I did; the conversation, the gist of it was that he would make some price concessions to me; I told him I didn't want to come unless I could buy the stuff right, and if he was ready to make that concession I would buy it, if it was right. So I came over there. It was after supper; I don't know my mind serves me it was probably eight o'clock; it might be more or less one way or the other. I met him at his store and we entered into the negotiations; he wanted to sell me some suits or overcoats, but I had turned them down because we couldn't get any where near a price. And he asked me then if there was anything in the shape of furnishing goods, the men's shirts, and hosiery and things of that character, and I said, yes, if he had some that I could use we might get to a price. We negotiated for a long time, I don't know how long, but it must have been anyhow two hours.

Q. Did you finally purchase some goods?

A. We finally agreed upon a basis, arrived at a basis to buy these goods at, which was fifty five cents on the dollar.

Q. Who would fix this basis price?

Q. The basis price was a compromise; I offered Mr. Badders fifty

cents and stood for it, but finally as a result of the long continued negotiations I agreed with him on fifty five cents.

Q. What amount of goods did you get at that time?

A. The amount of goods I got amounted to when I paid him for it amounted to \$790. I think, there were some odd dollars and cents I can't tell you exactly what it was.

Q. Did you invoice the goods you obtained?

A. Yes it was inventoried.

Q. You recall the total of the inventory?

643 A. Well it was in the neighborhood of fourteen hundred and something, the fifty five cents on the dollar made seven hundred and ninety some odd dollars, just what it was I don't recall.

Q. Did you pay him that night?

A. Yes.

Q. Just explain to the jury how that was done?

A. I will have to recite all the details here in order to get it before them.

Q. Very well.

A. I didn't come prepared to buy any goods that night, that is to pay for any goods, at least it was not in mind at the time; and when we were through I offered Mr. Badders a check, but I didn't have any of my own checks so I took a Shawnee Bank check Mr. Badders had there and in the conversation that ensued afterwards Mr. Badders asked me if it would not be possible for me to give him the currency; I had the currency; I had something over a thousand dollars and I paid him the money in lieu of the check.

Q. What was done with the check?

A. The check was endorsed and delivered to me and I give him the money for it.

Q. How did you come to have the money with you?

A. Well, on Christmas day, that is, the day previous to Christmas, and prior to the closing of the bank on the day previous to that, we usually carry over quite a little money, the store is peculiarly situated; we cash a great many checks, and we usually carry quite a little money on hand, the sales at the season of the year are very heavy, and we had quite a little currency on hand; I don't have a safe in the store; I carry all my money, as a rule, in a large leather pocket book about that size, and it is always on my person.

Q. Mr. Voiland were those goods delivered to your store that night?

A. They were.

Q. Tell the jury just how that came about?

644 A. I don't know that I can relate how the conversation came up about the delivery of the goods, as to whether Mr. Badders spoke first or I spoke first I can't tell at this distance; the question of delivery was brought up some way, somehow, and I don't know whether he asked me or I asked him, but the idea was, I can remember Mr. Badders said to me, I think he asked me when I wanted them delivered or something of that kind and I told him that any time would so; and he said, I know I suggested the

next day because I was tired, and it was a holiday, and I was anxious to get home, and he said to me, well I will deliver them to you now; I didn't want to take them at that time because I wanted to get away, didn't want to stay there, and it was quite late, and as I remember, I don't know the conversation that was had, but my impression at this time is that some suggestion was made he wanted to get them out of the road so they wouldn't interfere with transaction of his business, or get mixed up.

Q. Did you know anything about the transfer people being in waiting at that time?

A. No I didn't.

Q. Well did you learn soon after that they were?

A. Well now on that point I am not exactly clear, I wouldn't want to state positively whether the transfer company was called after that or whether they were called before.

The Court: Who called them, if you know?

A. Mr. Badders called them.

Mr. Robertson: Did you suggest the calling of them?

A. No.

Q. Just detail what happened now from then on?

A. The transfer people arrived and the goods were packed in cartons and trunks and placed on the wagon and they were taken to North Topeka to my store.

Q. Were a good many of these goods laid upon the wagon loose?

A. No I think not.

Q. Were they open?

A. No, they were in cartons or boxes.

Q. State what transfer company it was if you know?

A. Topeka Transfer Company.

645 Q. You know Mr. White who owns that, do you?

A. Yes sir.

Q. And then what was done?

A. The delivery was made.

Q. Did you go to your store that night?

A. Yes sir, I walked over.

Q. What time was it when you got over to the store and got these goods there?

A. I took no heed of time, except, that is, as to hours, I do not recall now that I made a mental note even of the hour but it was after mid-night.

Q. Of what did these goods consist?

A. They consisted chiefly of hosiery and sweaters and things of that kind.

Q. Were there any rain coats?

A. In the shipment, no.

Q. In that purchase?

A. No.

Q. Mr. Voiland I do not think I am clear upon what basis you paid fifty five cents for these goods; what do you mean?

A. Fifty five cents on the wholesale price.

Q. You mean by that fifty five cents on what they would cost in New York or with freight charges added?

A. Well, some merchants add their freight charges to the original cost of goods and others don't, it would be a small item any way, the freight charges on a consignment of goods.

The Court: How did you find the stock price?

A. He had the stock price there, giving the cost price.

Q. Badders had?

A. Yes sir.

Q. And you fixed the price you paid from the books that he had containing the invoices?

A. Didn't contain invoices Judge, the invoices are in another place; have a stock book, be lot 650, for instance, hosiery, tell who it came from and what it cost.

Mr. Robertson:

Q. I will ask you whether or not in addition to that you  
646 don't have knowledge sufficient so that you know what such goods are worth at wholesale yourself?

A. Intuitively I know the cost of all merchandise I handle, I don't know why I know it, but I do.

Q. Was there any further conversation between you and Mr. Badders that you now recall about the delivery of these goods?

A. I don't recall anything at this time.

Q. Had you anybody with you on that occasion?

A. Yes I had a man with me.

Q. Who was it?

A. It was Mr. Bradley, a man that worked for me.

Q. Is he one of your employes?

A. Yes sir.

Q. Did you afterwards buy more merchandise from Mr. Badders?

A. Yes sir.

Q. When was that?

A. It was, I can't tell you the exact date but it was within, it was either in the last days of December or the early days of January.

Q. What was that merchandise?

A. It consisted of suits and overcoats and some gaberdine rain coats.

Q. What do you mean by Gaberdine rain coats; how did you come to make that purchase?

A. Mr. Badders asked me to come over and look at them and I did.

Q. Who delivered those goods?

A. Topeka Transfer Company.

Q. How much did you buy?

A. I bought a job lot of overcoats and coats and rain coats there and paid two hundred and fifty dollars for the lot.

Q. State if you can what per cent of wholesale cost of that stuff did you pay for it?

A. Well I figured it was on about the same basis that I bought the other.

Q. Do you know where the rain coats were delivered to you from, whether from the Badders Clothing Company store house or  
647 from any other place?

A. I don't know.

Q. You just know you got the coats?

A. Yes sir.

Q. And you paid for them?

A. Yes sir.

Q. Who did you pay?

A. Mr. Badders.

Q. How did you pay for them?

A. Paid for them in currency.

Q. Did you have a check upon that occasion?

A. No sir.

Q. Now had you any other transactions with him that you recall?

A. No.

Cross-examination.

Questions by Mr. Hite:

Q. How long have you been in the merchandising business there in North Topeka Mr. Voiland?

A. Well I have lived in North Topeka since 1887 I was with my father before me.

Q. You have been in the clothing and furnishing business over there, have you not?

A. Yes sir.

Q. Some of that stuff you got you still have on hand, haven't you?

A. Yes sir.

Q. Some of the hosiery you didn't get a very good bargain on did you Mr. Voiland?

A. Some was poor stuff.

Q. Got any of that left?

A. Yes sir.

Q. Got some of the sweaters left?

A. Some of what?

Q. Sweaters?

A. Yes sir.

648 Q. Mr. Voiland Mr. Boyd was present during this time that you and Mr. Badders were selecting out of the stock, was he not?

A. He was there.

Q. Your man employed by you to help you select was there also?

A. Yes sir.

Q. One or two of the porters there of the Badders Company were present there also were they?

A. I don't recall that there was.

Q. Do you remember of seeing George Thompson there?

A. I couldn't swear positively.

Q. Might have been there and you might not have known it?

A. Yes sir.



Q. Did you make these selections from the stock around about various places?

A. Yes sir.

Q. And as you would select the goods would you put them aside some place?

A. Yes, laid them out.

Q. Where would you lay them out Mr. Voiland?

A. Oh it was in the most convenient place, as the goods were selected; I went through the store and I would look into a box and see if it was merchandise that I wanted, and if it was I took it, and if I didn't I passed it by.

Q. And when you would take the articles you selected you would put on top of some other articles, or on a table or some convenient place?

A. Yes.

Q. As a matter of fact they would have been very much in the way there for anybody that wanted to make any other selections would they not Mr. Voiland?

A. I don't know as to that, they were piled in the center there and things were in disorder.

Q. They might easily have gotten mixed up again unless put in some place by themselves, might they not?

A. Yes sir, it could have been.

Q. Did Mr. Badders expect you over there earlier than you finally got there?

649 A. My recollection of that is not clear; it seemed to me at one time that I had an appointment with Mr. Badders during the day, but I am not positive about it. I made no notes of this at all.

Q. Mr. Voiland, to refresh your recollection, isn't it a fact that Mr. Badders had an appointment with you about ten o'clock in the forenoon and that circumstances arose that you couldn't get over there in the forenoon and finally didn't get there until evening; might not that be a fact?

A. That might be the fact Mr. Hite.

Q. And you and Mr. Badders and Mr. Boyd and your man were not trying to hide there at all, were you?

A. No sir, I was not I know.

Q. You didn't think you were engaged in doing anything that was wrong, did you, Mr. Voiland?

A. No sir I did not.

Q. Mr. Voiland the sales that take place in your business usually conclude, the major portion of them, at least, Christmas eve, do they not?

A. You mean they end at that time?

Mr. Robertson: Objected to as immaterial when his sales concluded, and not cross examination.

The Court: I don't think you need to ask that.

Mr. Hite: Except.

Q. You knew of the fact Mr. Badders had had a sale going on over there under somewhat high pressure, did you not?

A. Yes.

Q. Thoroughly well advertised all over town, was it not?

A. Yes.

Q. It had to some extent stopped sales by other merchants, had it not?

A. Yes sir.

Q. Mr. Voiland isn't the usual result of such sales as that to leave certain kinds of goods, some sizes, gone out of the stock that ought to be replaced, and job lots left of things, that and other articles?

A. It would be possible.

650 Q. Now at that time of the year if you had gone on the market in New York would it not have been possible for you to have bought goods about that price, job lots?

Mr. Robertson: Objected to as not proper cross examination and immaterial.

The Court: Answer.

Q. Answer the question, if you know?

A. I want to get your question Mr. Hite; you mean to compare the goods I bought with goods of the same character in New York?

Q. No sir, what I am getting at Mr. Voiland, is, that time of year, is it not frequently the case that merchants in your business are able to pick up goods at fifty cents on the dollar; do you know of such circumstances?

A. I have, yes; yes, I have bought goods at fifty cents on the dollar.

Q. Right straight from the dealers themselves, haven't you?

A. Yes.

Q. And that would be the end of the season mostly, would it not? Or out of season?

A. Well, to illustrate, I bought some last July, over-coats in July at about that price in New York.

Q. That is about fifty cents on the dollar.

A. About fifty cents on the dollar.

Q. For aught you know Mr. Voiland Mr. Badders may have gotten some of these goods himself at fifty cents on the dollar?

Mr. Robertson: Objected to as not cross examination and argumentative, immaterial.

The Court: What did he say to you about what they had cost him, if anything?

A. Who?

Q. Badders?

A. Nothing at all.

Q. What did he show you as to bills or anything?

A. I didn't ask him as to the source of his merchandise.

Mr. Hite:

Q. You saw the stock books?

A. Yes.

Q. That stock book, you don't know whether it showed discounts or not?

A. I don't know anything about it.

Q. All you took was what was on the face of that stock book and you paid him fifty five per cent of that, isn't that right?

A. Yes sir.

Q. Mr. Voiland am I right in understanding from your testimony that your memory is not very certain as to how this matter of delivery happened to come up?

A. No I couldn't tell you the things that lead up to it.

Q. Who paid for the drayage over to your place?

A. I paid for it.

Q. Who paid for the drayage the second time that you got merchandise?

A. I can't tell you that, I'm not sure of that.

Q. The second purchase, as I understand it, the goods were delivered in the day time?

A. Yes sir.

Q. You said something in your direct examination about Mr. Badders saying to you that he would like to get these goods out of the way; what do you desire the jury to understand by that Mr. Voiland?

The Court: What further did you say, if anything in reference to the matter, as to why he wanted the goods out, if anything?

A. I don't recall, I wouldn't attempt to give that man's conversation, it would not be right, and the only thing I can remember is Mr. Badders said they would be in the way and he wanted to get them out of the road, but I don't want to attempt to say what he said. I don't know.

The Court: That in substance was what was said?

A. That is the gist of it.

Mr. Hite:

Q. Mr. Voiland you testified about this night delivery on another occasion, did you not?

652 A. Yes sir.

Q. And at that time please state if this question was not asked you by D. R. Hite, of counsel for the defendant. "Now I understand you to say that after this matter was closed up and you had agreed on the price as to the sale, Mr. Badders asked you when you wanted these goods delivered? Is that right?" And that you answered that question "Yes sir." Do you recall that?

A. I don't recall it Mr. Hite.

Q. And was not this question asked you: "And you told him as soon as possible." And that you answered "Yes."

A. Well, that might be, that might be. The only explanation that I can give you of that is this; I buy a good deal of goods in New York and Chicago and different places from small dealers. Lots of times in New York I take an express wagon with me and bring the stuff down in my arms and put it in the express wagon and send some place to be packed. Immediate delivery does not mean on the spot, it may mean a subsequent time, and it does mean a subsequent time because a clothing man will tell you when he

buys stuff for immediate delivery it is as soon as it can be got to him, may be in a week or may be in a day or ten days.

Q. By shipment you mean Mr. Voiland?

A. Yes.

Q. I will ask you if this question was not asked you and this answer made: "Mr. Badders call a wagon?" "Yes sir." "After you had had this talk?" "Yes sir." That your testimony on the former occasion?

A. Why I don't know Mr. Hite whether it was or not; I can't recall my testimony at that time, I can only give it as I recollect it.

Q. That former occasion when you testified was very much closer to the time of the event than the present?

A. Yes sir.

Q. And would you say you were more likely to be correct at that time Mr. Voiland than at the present time as to that being your testimony?

653 A. Well I will tell you Mr. Hite I want to get it as straight as I could get it without any outside interference, and that is the reason, I had no notes on it, and I didn't like to offer any evidence; I want to get it just as exactly as it occurred as near as I can, I would not affirm or deny that, I couldn't.

Q. It might be true or it might be a little different?

A. Yes, it might be a shade one way or the other.

(Witness excused.)

FLOYD L. WHITE, called as a witness on his own behalf, having been first duly sworn, testifies, as follows:

Direct examination.

Questions by Mr. Brady:

Q. Give the reporter your name?

A. Floyd L. White.

Q. Where do you live?

A. 421 East Eighth Street, Topeka, Kansas.

Q. And what is your business?

A. I am a warehouse man with the Topeka Transfer Company.

Q. With O. H. White and the Topeka Transfer Company?

A. Yes sir.

Q. You remember of the occasion of your being to haul some goods in the night time in the month of December, 1913?

A. I do.

Q. What day of the month was it?

A. It was about twelve fifteen the morning of the 26th.

Q. Twelve fifteen in the morning?

A. Yes sir.

Q. And where did you go after being called?

A. Went from my place down to get a man at the corner of Seventh and Adams and from there up to the ware house number one, and from there up to 216 East Sixth Street to get Mr. Dusler to go with me.

Q. And what did you take with you a team or wagon or rig?

A. Went back then and got a team and flat wagon.

654 Q. And where did you go?

A. Went from there after Mr. Dusler and from there to Mr. Badders' store.

Q. Who did you find there?

A. When I first went there was Mr. Dusler, let me in at the door after I was there a few minutes, and Mr. Voiland's man Mr. Bradley and Mr. Voiland, was there and Mr. Badders was there and another man.

Q. What time was that when you arrived?

A. About one o'clock.

Q. And what did you do there?

A. We carried some cartons first out of the south front room of the basement around to the side door, then after we got them down we opened the doors and loaded the wagon.

Q. How many boxes and cartons did you carry out and put on that wagon that night?

A. Ten trunks.

Q. Ten trunks?

A. Ten trunks, yes sir.

Q. Anything else?

A. And two boxes and a bale and two top trays.

Q. Know about how much weight you had on your load? If you don't remember——

A. Have to estimate it.

Q. Well, about what? Have you a judgment, in your judgment what was the load?

Mr. Hite: Is it material?

The Court: I do not think it is; the testimony is here, does not seem to be any dispute about it, was that these boxes were packed in the store after the price was agreed on between the seller and the buyer and subsequently put into a wagon and taken over to Voiland's place; now do you want to prove any more taken to Voiland's place?

Mr. Brady: No, but, Your Honor, the defense has not had an opportunity to dispute this as yet and I think it proper to put what witnesses we have on this point here on, don't want to use too many, but should use the important ones.

654½ Mr. Hite: We do not think it is material how heavy the cases were.

Mr. Brady: I withdraw the question.

The Court: As there is no controversy here, as I understand it, about a number of boxes or trunks or what not that were taken out of the store, and what they contained, and the price paid for it, I do not understand there is any controversy about that, and that they were taken out at that time of night.

Mr. Brady: I withdraw the question; with your permission——

The Court: If you have not got anything else here with this witness, no use to waste all this time proving a fact when it is practically admitted on the other side.

Mr. Brady: If it is admitted on the other side it is not material. The Court: You had the man here who delivered the freight, the man who bought the things and who paid for it, the hour which it was taken out over there and where it went to; you have got that all in and I don't see why waste a whole lot of time with transfer men to prove what is already in; go on and ask the question. I can save time by letting it go in.

Mr. Brady:

Q. Now did you haul any more goods from that store at any other time during the month of December?

A. I didn't myself, one of the other wagons did.

Q. Very well. Did you on any occasion see any of the boxes from the Badders Company in the store house of Mr. White of the Topeka Transfer Company?

A. Yes sir.

Q. About how many?

A. Fourteen.

Q. Do you know what were in those fourteen boxes? Do you know what was in the boxes?

A. I never saw anything in them, I just saw the empty boxes.

Q. Do you know where those boxes came from?

A. They came from Mr. Badders' store.

655 Q. What was the date.

A. I can't give that date.

Q. Do you remember when the receiver took charge of the Badders stock?

A. I don't remember that date either.

Q. Can you state what the brands and marks on these boxes were?

A. I can't definitely, several marks on them.

Q. Do you know anything about a second lot of goods being hauled to Mr. Voiland's store for Mr. Badders; did you haul any?

A. Not myself.

Q. Very well; who did?

A. Why Arthur Larsen is the driver's name.

The Court: That is the two hundred and fifty dollars' worth bought later, as I understand it; I don't understand there is any controversy about that. Go on, call your next.

(Witness excused.)

J. C. McDONALD, called as a witness on behalf of the plaintiff, having been first duly sworn, testifies, as follows:

Direct examination.

Questions by Mr. Brady:

Q. State your name?

A. J. C. McDonald.

Q. And where do you live?

A. 515 Lawrence Street, Topeka.

Q. What was your business in December 1913?

A. Driving a transfer wagon.

Q. For whom?

A. Mr. White of the Topeka Transfer Company.

Q. Do you remember during the month of December 1913 of hauling any goods or boxes away from the Badders Company's Clothing Store in Topeka?

A. I did yes sir.

Q. What time in the month was it?

656 A. Well I couldn't tell you exactly the date I'm sure because I didn't pay any attention to the date of it.

Q. Was it during the time he was having his sale there?

A. Well I think it was yes.

Q. Can you state what time it was in relation to Christmas day?

A. No I couldn't tell you what time it was.

Q. Whether it was before or after?

A. No sir I couldn't tell you positively.

Q. Who was with you when you hauled those goods away?

A. A man by the name of Holmes.

Q. John Holmes?

A. Yes sir.

Q. What time of the day or night was it?

A. It was along in the afternoon some time I judge probably four o'clock between four and five.

Q. Where did you haul them to from his store?

A. I hauled the empty boxes to the store house.

Q. Well, I was asking about hauling boxes with something in them?

A. I hauled two boxes to the store house.

Q. How large were those boxes?

A. Well I should judge they weighed probably two hundred and fifty pounds apiece.

Q. Did you see Mr. Badders that day?

A. Well I couldn't say that I did when I taken those two boxes away.

Q. Were there any other boxes that contained goods hauled from the store to the store house?

A. Not by me no sir.

Q. And you say you have no way of fixing the date?

A. No sir.

Q. You know it was in the month of December?

A. Yes sir it was in the month of December I hauled those two boxes.

Q. Did you haul any goods back to the store again?

A. I did.

Q. From where?

657 A. From the store house.

Q. When was that?

A. Well I couldn't give the date of that either.

Q. Was that after you had hauled the two boxes away?

A. Yes sir.

Q. How many boxes containing goods did you haul to the store after that?

A. I hauled six boxes.

Q. Do you know how they were marked?

A. No sir I couldn't tell you how they were marked.

Q. From whom did you receive those boxes?

A. Well I received them from the store house men.

Q. Who was the store house man from whom you received them?

A. Fennimore.

Q. L. E. Fennimore?

A. Yes sir.

Q. Did you receive any more than six boxes from the store house from Mr. Fennimore?

A. No sir.

Q. Or from the railway company and take to the Badders store?

A. Well of course at different times we were hauling different times to the store right along.

Q. I see.

(Witness excused.)

JOHN HOLMES, called as a witness on behalf of the plaintiff, having been first duly sworn, testifies, as follows:

Direct examination.

Questions by Mr. Brady:

Q. What is your name?

A. John Holmes.

Q. Where do you live?

A. Topeka.

Q. What were you doing in December 1913?

A. I was working for the Topeka Transfer Company.

Q. Do you remember of hauling any goods away from the Badders store during the month of December 1913?

A. No sir.

Q. Remember being there with one Jack McDonald?

A. I was there to deliver some goods there.

Q. You were there to deliver some goods?

A. Delivered some goods to the store.

Q. Where did you get those boxes?

A. I got them, transferred them off of another wagon onto mine at the store house.

Q. Whose wagon was that?

A. Charles Cypher's.

Q. You received them from Charles Cypher and delivered them at the store?

A. Yes sir.

Q. What date was this?

A. Well I am not sure about the date, it was some time I think in January just after the holidays.

Q. After the holidays?

A. Yes sir.



Q. And how many boxes were there?

A. I believe there were four.

Q. Know anything about what they contained?

A. Part of them contained grips and suit cases.

Q. Do you know or not?

The Court: Did you see in the boxes?

A. I saw them opened yes sir.

Q. What were in the boxes?

A. Part of them had grips and suit cases; there was one that had some kind of overcoats. I didn't notice what kind of coats they were particularly, some kind of overcoats, and I am not sure whether I saw all of them. I am sure I saw three of them opened, and the other one I don't know about.

Q. You say you are not sure of what date that was?

A. Sir?

Q. Not sure of the date?

A. No sir.

659 Cross-Examination.

Questions by Mr. Hite:

Q. Just after the holidays was it Mr. Holmes?

A. I believe it was.

Q. These were all new goods?

A. Yes sir, that was new goods.

(Witness excused.)

L. E. FENIMORE, called as a witness on behalf of the plaintiff, having been first duly sworn, testifies, as follows:

Direct examination.

Questions by Mr. Brady:

Q. What is your name?

A. L. E. Fenimore.

Q. Where do you work?

A. In the transfer business for myself.

Q. And where were you working in the month of December 1913?

A. Topeka Transfer and Storage Company.

Q. Did you know George S. Badders at that time?

A. Yes sir.

Q. Did you have any business transactions with him in reference to goods and boxes of goods?

A. Yes sir.

Q. I wish you would state to the jury what that transaction was and about the time?

A. Well we were storing goods for him and we had some in storage he wanted shipped out.

Q. When was the first goods received in the month of December at the storage room by you from Mr. Badders?

A. Along the first of December.

Q. How much of them was there and what were they?

A. We had about fourteen boxes and some rain coats and clothing, couple of trunks.

Q. What did they contain?

A. I couldn't say what was in the boxes.

Q. You didn't open them?

660 A. No.

Q. And how do you know about the others, about the rain coats and the overcoats?

A. They were brought down from the store in bundles.

Q. And who boxed them up and packed them?

A. The packers at the ware house Frank Dunn and myself and Dusler.

Q. About how many overcoats did you pack in boxes?

A. Well sixty or seventy I suppose.

Q. Were there any suits of clothes?

A. Yes sir.

Q. About how many suits of clothes did you pack in boxes brought from the store to your ware house?

A. I don't know.

Q. About how many?

A. Box of that probably weigh two hundred and fifty pounds.

Q. And anything else received, any other boxes besides these fourteen you speak of?

A. Only the stuff that came from the store, two trunks.

Q. Now after you had packed those boxes did you see Mr. Badders down there?

A. Not after I packed them no sir.

Q. Did you talk with him?

A. Before I packed them yes.

Q. Before you packed them?

A. Yes sir.

Q. Now I wish you would state to the jury what the conversation was and what directions if any you received from Mr. Badders in reference to those boxes?

A. He gave me the shipping direction on them and told me how to mark and how to send them off and the roads to send them over.

Q. And what did you do?

A. I followed out his directions.

Q. After you packed the goods in the boxes did you mark the boxes as he directed?

A. Yes sir.

661 Q. Can you give the names he gave you and addresses to whom you should ship these?

A. I think so.

Q. Wish you would state them.

A. P. U. Altman, Chas. A. Ambroz.

The Court: Where was that first shipment to go?

A. That went to St. Joe.

The Court: Go on.

Mr. Brady: Missouri?

A. Yes sir. H. P. Hillsley, Perry G. Barnley.

Q. Where did the second shipment go?

A. To St. Joseph.

Q. All went to St. Joseph?

A. Yes sir. Perry G. Barnley and Frank Smithson, O. P. Haslet, Kansas City, and one case to Stine Bros at Hastings, Neb.

Q. Do you know how many boxes were shipped to Haslet at Kansas City, Mo.?

A. No I don't.

Q. Do you know how many went to St. Joe?

A. Nine went to St. Joe altogether.

Q. Nine boxes?

A. Yes sir.

Q. You followed out his instructions and had them shipped as he directed?

A. Yes sir.

Q. What time in the month were they shipped?

A. The first shipment went the 20th of December, the other I don't recollect, it was after that, that was shipped to St. Joe.

Q. Now did you ever see any of those boxes of goods again?

A. Yes sir.

Q. Where did you see them?

A. First saw them on a transfer wagon.

Q. And were they received at your ware room?

A. I wasn't at the ware room then.

Q. Where were you?

A. I was at home when I saw the boxes going by.

662 Q. By your house?

A. Yes sir.

Q. Do you know where they came from?

A. Only what I heard.

Q. Did you see the names and addresses on the boxes?

A. Yes sir.

Q. Who had put those names and address- on those boxes when they were shipped out?

A. Frank Dunn and myself.

Q. And were they the same boxes you had shipped out?

A. Yes sir.

Q. Did you observe the boxes to see to whom they were directed when they returned?

A. Not at the time I saw them on the wagon but I recognized my writing on the boxes as they went by.

Q. Now then where are those boxes now?

A. They are in storage at Topeka Transfer I suppose.

Q. Have you seen them there since they came back?

A. Yes sir.

Q. And to whom were those boxes addressed when they came back?

A. Badders and Company.

Q. And how many boxes came back?

A. Fourteen I believe.

Q. Do you know what day of the month that was?

A. No sir.

Q. You know when it was in relation to the last of January?

A. I think it was in January some time they came back.

Q. Know when it was in reference to the time the receiver took charge of the store?

A. Why no I don't, I don't know when he took charge.

Q. Were you a witness in the bankruptcy hearing at Topeka?

A. Yes sir.

Q. When was it in reference to the hearing when you were a witness in the bankruptcy case that the goods came back, the boxes?

The Court: You mean how long before that hearing?

663 Mr. Brady: How long after that, or if it was before?

Mr. Hite: I think the witness is doing his best to answer.

The Court: Do you recollect what date it was?

A. No sir I don't.

Q. Can you fix any date by any other date or any other thing to show when it was?

A. The time I saw them is the only way I can tell, I think it was the night that Mr. Clark took charge but I am not sure.

Mr. Brady:

Q. Took charge of the Badders Company store?

A. I think that was the night.

Q. Did you have an occasion to examine and see what were in those boxes?

A. No sir, not to see what was in them, I examined the boxes.

Q. Did you receive an instruction from Mr. Badders in reference to those boxes when they came back?

A. No sir.

Q. Did you have any other conversation with him other than the directions how to ship these goods out, when and where and to whom?

A. No sir, only about the bills of lading and boxes and where to ship and who to.

Q. Did you have any instructions from anybody else where these goods should be sent when they came back?

A. No sir.

Q. Did not?

A. No sir.

(Witness excused.)

SEWARD R. GRAHAM, called as a witness on behalf of the plaintiff, having been first duly sworn, testifies, as follows:

Direct examination.

Questions by Mr. Robertson:

Q. What is your name?

A. S. R. Graham.

Q. Your first name Seward?

A. Yes sir.

664 Q. Where do you live Mr. Graham?

A. Hiawatha, Kansas.

Q. What is your business?

A. I am a merchant and a travelling man from Rochester.

Q. Engaged largely in mercantile business?

A. I have six stores.

Q. In how many states is your business located?

A. In three states.

Q. Are you acquainted with the defendant George S. Badders?

A. Yes sir.

Q. How long have you known him?

A. About a year and a half.

Q. Were you at one time a stockholder in the Badders Clothing Company?

A. Yes sir.

Q. When did you become such?

A. In May, let's see, in May 1913, wouldn't it?

Q. What stock did you hold?

A. Twenty five shares.

Q. Were you ever elected, so far as you know, to any office in the company?

A. No sir.

Q. Were you ever secretary or treasurer or both?

A. No sir.

Q. Sir?

A. No sir.

Q. Did you ever maintain a desk or office of any sort at the Badders Clothing Company's place of business in Topeka?

A. No sir.

Q. Did you ever move or contemplate moving to the city of Topeka, Kansas?

A. No sir.

Q. Sir?

A. No sir.

Q. Did you ever tell anybody that?

The Court: Go on and answer.

665 A. Well I thought perhaps I might move there at one time to educate my children.

Q. How long ago was that?

A. I don't know, they are not quite ready yet.

Q. Well did you ever communicate that to Mr. Badders?

A. Well I think I did tell Mr. Badders I might move to Topeka when my children were big enough to go to school.

Q. That period has not come yet?

A. No sir.

Q. You were acquainted with Alfred Decker & Cohn?

A. Very well, yes sir.

Q. Al. Decker an old time friend of yours?

A. Yes sir, I was connected in business once with Mr. Decker.

Q. Are you a stockholder in the Badders Clothing Company still?

A. No sir.

Q. When did you cease to be such a stockholder?

A. I sold my stock the latter part of December or in October I can't remember.

Q. Of what year?

A. 1913.

Q. Did you at that time get your money for it?

A. No sir.

Q. Who did you sell the stock to?

A. Mr. George Badders.

Q. When did you get your money if at all?

A. He gave me a one hundred and twenty day note and it was paid when it was due.

Q. When was it paid?

A. It was paid when the one hundred and twenty days was up.

Q. On the day of maturity?

A. Very close to that.

Q. Remember whether that was paid by cash, draft, or otherwise, and if you do, how was it paid?

A. It was paid, I can't tell you how, the question was asked me before; a cashier's draft, I don't know whether a company check or cashier's draft.

Q. You remember the occasion of being called over the telephone by Mr. Badders when you were at one time down in Oklahoma?

A. Yes sir.

Q. About when was that?

A. Well that was—seems to me it was in January, January.

Q. What year?

A. The same year.

Q. You mean 1913?

A. Yes, 1913, that is when I was interested there, yes sir.

Q. Well but you did make a trip upon one occasion from somewhere in Oklahoma to Kansas City, and when you got to Kansas City received certain information from Mr. Badders by which you got boxes of merchandise from storage companies there?

A. I received the information before I came, he telephoned me, asked me if I was coming.

Q. That is what I want to get at, when was that?

A. I forget the dates, I can't remember the date exactly on that but it was in the same year.

The Court: Was it January 1913 or January 1914, last year?

A. It was in January 1913.

The Court: That is two years ago.

Mr. Robertson: Two years ago or a year ago now?

A. A year ago now.

Q. You remember the occasion of bankruptcy proceedings being started against Mr. Badders, don't you?

A. Well I read something about it in the paper, but I am travel-

ling on the road in four or five different states and I didn't know about the bankruptcy business until it was over.

Q. Mr. Badders called you over the telephone?

A. Yes sir.

Q. Where were you?

A. Oklahoma City.

Q. State what the conversation was?

A. Well it was rather hard to hear.

Q. Where was Mr. Badders talking from?

667 A. Well I couldn't tell that; he first telephoned to Hiawatha to my wife to find out where I was and I was in Oklahoma, but it was Sunday, and it was a pretty day and I was out, and he had a hard time to find me, and it was windy and I could hardly hear him; and he asked me if I was coming to Kansas City; and I said yes, that night; and he asked me if I would go to the transfer company and send some merchandise back that was stored there, and I told him yes, I would; and when I came to Kansas City I went and had it returned to Topeka.

Q. Well where did you go before you went to the transfer company when you go to Kansas City?

A. Went to the Baltimore Hotel.

Q. Well what if anything did you receive there from Mr. Badders?

A. I received the storage house, what do you call them?

Q. Ware house receipts?

A. Ware house receipts.

Q. Well, who did you receive them from?

A. Mr. Badders.

Q. Remember in whose names those were, those ware house receipts appeared?

A. No I don't, they are just long slips, and I took them down to where—it was the A. B. C. and Globe and I took them in there and told them to send to Topeka.

Q. I don't understand your expression?

A. I don't know as I ever saw store house receipts before but they were just in an envelope and the numbers of the boxes, &c.

Q. How many boxes were there altogether?

A. Well in the two places?

Q. Yes sir?

A. I would judge there was ten or twelve.

Q. Wasn't there about fourteen?

A. Well I would say ten or twelve, I couldn't tell you the number.

Q. You don't know the number?

668 A. I don't know the number.

Q. In how many storage houses did you find them?

A. Two places.

Q. I will ask you to state whether those ware house receipts were in the name of the Badders Clothing Company or Mr. Badders?

A. I don't think they were Mr. Badders'.

Q. Not in the name of either one?

A. No sir.

Q. Tell the jury what you did?

A. I ordered Mr.—I forget his name, I know him.

Q. Mr. Sullivan?

A. Mr. Sullivan.

Q. Of what company?

A. Of the Globe to return those to the Badders Clothing Co.

Q. You are an old acquaintance of Mr. Sullivan's?

A. Oh yes I know Mr. Sullivan very well.

Q. And you had this stuff sent to the freight depot, if I understand you?

A. He sent it.

Q. Who paid for having it sent?

A. I paid for it.

Q. Who, if you know, paid for the storage charges?

A. I paid for the storage charges.

Q. There were accumulated charges.

A. The whole thing was seven or eight dollars, I believe, something like that.

Q. When in relation to that did you get your money back for your stock?

A. Oh I had—I think I had my money then; I had my money I think it was on January—this must have been before January.

The Court: Well, can you tell when you got these boxes out of the store houses at Kansas City, Mo., and had them sent to Topeka? Can you tell that?

A. I can't remember the date exactly Judge.

Q. Well, was it in 1913 or 1914?

669 A. It must have been 1914.

Q. Well was it January?

A. Well, if it was January, be 1915.

Q. I think you are a little mixed on dates or something, aren't you?

Mr. Robertson: This is January, 1915?

A. 1915. All I can tell you is a year ago; I don't want to be giving out dates, 1913, or 1914, all I go by, it is a year ago since the thing happened.

Q. You ever perform an errand like that for Mr. Badders more than once?

The Court: Do you know where those goods came from?

A. Don't know a thing about it, I didn't see them, I only seen the store house receipts.

Q. And you turned over the store house receipts and directed them sent back?

A. No sir.

Q. Know how they got into the store house?

A. No I don't know a thing about that.

Q. Or how they came there?

A. Don't know what was in the boxes.

Q. Sent them back?

A. Sent them back to the Badders Clothing Company.



Mr. Robertson:

Q. What if anything do you know about a box of merchandise having been sent by the Badders Clothing Company to a firm in Hastings, Neb.?

A. That is a firm I am vice-president of, Stine Bros. Clothing Company, and Mr. Badders sent me a box of umbrellas.

Q. What did you do with them?

A. And asked me if I could use them; well I was travelling and I didn't get there for about three weeks, and when I got there Mr. Stine says, there is a case of "umbrels" here I think, what about it. Well, I says, Badders in Topeka asked me to buy them; we opened them up and looked at them, and they wasn't such stuff as we could use in our store, and boxed them up and sent them back to Badders Clothing Company.

670 The Court: That was not one of the boxes you sent from Kansas City?

A. No, no, no, this was a box sent to my store; he asked me if I could buy them?

Cross-examination.

Questions by Mr. Hite:

Q. Mr. Graham while you held the stock in the Badders Clothing Company did you at any time sign any certificates of stock as secretary?

A. I signed the certificate in May, the morning I got my stock, Mr. Badders said they didn't have anybody there to sign it, and I signed my own certificate and the three or four more.

Q. As secretary?

A. I don't know whether it was secretary or not; he said they didn't have any secretary.

Q. Now your connection with the Badders Clothing Company, as I understand you, Mr. Graham, was that you had this twenty five hundred dollars of stock which you sold to Mr. Badders some time in September or October of 1913?

A. Yes sir.

Q. And took his note for one hundred and twenty days?

A. Yes sir.

Q. Did he pay you par for the stock?

A. Yes sir.

Q. Now did you do any other acts as secretary or anything of that kind in connection with the company?

A. I helped—what I intended to do was to help and assist Mr. Badders in buying his goods, and there is where I tried to help him all I could.

Q. You were not elected secretary?

A. No sir.

Q. Do you know anything about who ever was secretary of that company so far as doing the work of a secretary?

A. I had nothing to do with the office, as I say, I was down on the floor. I knew nothing about that.

## Redirect examination.

671 Questions by Mr. Robertson:

Q. Just one question I forgot about this witness which I want to ask him. Mr. Graham I will ask you whether you ever received or have any knowledge or know anything about a certain secretary's commission upon sales of the Badders Clothing Company in excess of fifty thousand dollars for the year 1913, which it is in evidence was paid December 31st, in the sum of \$2797.94?

The Court: Were you ever secretary?

A. No sir.

Q. Well do you know of anybody else that was secretary?

A. I do not.

Q. You ever receive any money as secretary?

A. No sir.

Mr. Hite: I wish to object to the question, the form of the question by the United States Attorney, that it is in evidence that money had been paid.

The Court: We will not put it in evidence; if it is in evidence it is in; it is not necessary to repeat it. May be some controversy about that. Counsel may deny it.

Mr. Hite: Except.

(Witness excused.)

The Court: (5:30 P. M.) Gentlemen, have to live up to our agreement. Take a recess at half past five, and the hour has arrived, and must keep that agreement, and you are now excused until seven o'clock this evening.

(7:00 O'CLOCK P. M.) (Tuesday evening.)

S. R. BOYD (recalled).

Direct examination.

Questions by Mr. Robertson:

Q. Mr. Boyd I hand you a paper marked Exhibit No. 70 and ask you if that contains the signature of Mr. Badders?

A. I think it does.

Mr. Hite: What do you say Mr. Boyd?

A. I said I thought it did.

672 

The Court: What?

A. I said I thought it did.

Mr. Robertson:

Q. Well, don't you know that it is?

A. Well, to the best of my knowledge that is it.

Q. You are familiar with his signature?

A. Yes sir.

Q. And it is your judgment it is his signature?

A. I think it is.

Q. I hand you a paper marked Exhibit No. 71 and ask you to state whether that has Mr. Badders' signature?

A. I think it has.

Q. I now hand you a paper marked Exhibit No. 72 and ask you to state if that bears the initials of Mr. Badders?

A. I think it does.

Q. I hand you a paper marked Exhibit No. 73 and ask you to state if that bears the signature of Mr. Badders?

A. I think it does.

Q. I hand you a paper marked Exhibit No. 74 and ask you if that contains the signature of Mr. Badders?

A. I think it does.

Q. I hand you a paper marked Exhibit No. 75 and ask you if that contains the signature of the defendant?

A. I think it does.

Q. I hand you a paper marked Exhibit No. 76 and ask you if that bears the signature of the defendant?

A. I think that is it.

Q. I hand you a paper marked Exhibit No. 77 and ask you if that bears the signature of the defendant?

A. I think so, yes sir.

Q. I hand you a paper marked Exhibit No. 78 and ask you to state whether that bears the signature of the defendant?

A. I think it does.

Q. I hand you a paper marked Exhibit No. 79 and ask you to state if that has the signature upon it of the defendant?

A. I think it has.

Q. I hand you a paper marked Exhibit No. 80 and ask  
673 you to state if that has the signature of Mr. Badders upon it?

A. I think that is it.

Q. I hand you a paper marked Exhibit No. 81 and ask you to state if that bears the signature of the defendant?

A. I think it does.

Q. I hand you a paper marked Exhibit No. 82 and ask you if that bears the signature of the defendant?

A. I think that is it.

Q. I hand you a paper marked Exhibit No. 83 and ask you if you find the defendant's signature upon that?

A. I think that is it.

Mr. Hite: What did you say Mr. Boyd?

A. I said I thought it was.

Mr. Robertson:

Q. Is it your judgment that is his signature?

A. I think it is.

Q. I hand you a paper marked Exhibit No. 84 and ask you to state whether that is his signature?

A. I think it is.

Q. I hand you a paper marked Exhibit No. 85 and ask you to state whether that has his signature upon it?

A. I think it has.

Q. I hand you a paper marked Exhibit No. 86 and ask you to state if that bears the signature of the defendant?

A. I think that is it.

Q. Sir?

A. I think that is it.

Q. That is your judgment; that is his signature; what is your opinion about it?

A. I won't say.

Q. Don't want to say for sure?

A. No sir.

(Witness excused.)

S. E. Cobb, called as a witness on behalf of the plaintiff, having been first duly sworn, testifies, as follows:

674 Direct examination.

Questions by Mr. Robertson:

Q. State your name to the court and jury?

A. S. E. Cobb.

Q. Where do you reside Mr. Cobb?

A. Topeka, Kansas.

Q. What is your business?

A. Banking.

Q. With what bank are you connected?

A. I am vice president of the Bank of Topeka.

Q. How long have you been so connected with the Bank of Topeka?

A. Since January first 1913, or February first that should be, 1913.

Q. Have you with you a transcript of the checking account of the Badders Clothing Company in your bank for the latter portion of 1913?

A. The Badders Company, I believe was the way the account was carried.

Q. The Badders Company?

A. (Witness produces paper.) I have transcript of the ledger account from November, November and December of that year.

Paper referred to is marked Exhibit No. 87.

The Court: Well go on.

Mr. Hite: Do you offer it in evidence?

Mr. Robertson: Yes, I offer Exhibit No. 87 in evidence.

Mr. Hite: Defendant objects as incompetent, irrelevant and immaterial, and hearsay.

The Court: You offer that; let me ask you about that. Did you take that from the books yourself?

A. No sir, I had one of the bookkeepers take it.

Q. Did you verify it from the books yourself?

A. Yes sir, I did.

Mr. Hite: Just a word, Your Honor; these are records of another person, another corporation; there is no evidence here that Mr. Badders ever had any access to these books, knew anything about  
675 the entries that were put in them, and we submit as to him it is certainly hearsay, the contents of the books of some other corporation to which he has never had any access, and so far as the testimony of the witness shows have never been submitted to him.

The Court: There is enough evidence here tending to show that he was the president of the Badders Company and was the managing man for the Badders Company, and did all the business as such executive officer of the Badders Company; that evidence is here in various ways; you make no objection to this paper because the book itself is not here?

Mr. Hite: We did object to it as incompetent because it is secondary.

The Court: Do you insist now the book itself should be brought here instead of this?

Mr. Hite: I don't care to take that position, Your Honor, except this, if the book was here itself I should still object to it for the reason I should contend it was hearsay, but it would not be secondary, and I do not wish to be said to waive our right to object to this on all the grounds that I have mentioned.

The Court: Can you have the book from which this was taken brought here by the person who kept the book?

A. Why that could be done Judge. I am not sure that the book-keeper who kept those accounts at the time they were made could be had; I do not believe that he is in our employ at this time, but we have the original records of course.

The Court: Made by him in the office of your corporation under the laws of the state?

A. Yes sir.

Q. And this is a transcript from the book kept by that corporation?

A. Yes sir.

The Court: You may offer it.

Mr. Hite: Defendant excepts.

The Court: Well, do you propose to read all of it or call attention to any particular portion of it without stopping to read the whole entry?

676 Mr. Robertson: I call attention to the fact the account was closed up on the 23rd day of December, 1913. I suppose we can refer to it in argument.

The Court: You offer the whole paper, Exhibit No. 87 in evidence. The whole paper is in. Such reference to it as counsel desires to make to it may be had.

Mr. Robertson:

(A copy of Exhibit No. 87 is attached hereto and made a part hereof.)

Q. Does this cover all the record of this account that your bank has for the months of November and December 1913?

A. Yes sir.

Mr. Hite: Your Honor, we desire to interpose an objection to the witness stating what the paper contains.

The Court: The paper is in evidence and speaks for itself.

Mr. Robertson:

Q. Call your attention to Exhibit No. 83, and upon Exhibit No. 83 particularly to what appears to be a rubber stamp containing certain figures and words. I will ask you to state, if you know, what stamp that is?

A. That is an indication that that was paid at the paying teller's window of our bank.

Q. That is your bank stamp?

A. Yes sir. I have every reason to believe that is our bank stamp.

Q. Do you have any personal knowledge or recollection of this paper Exhibit No. 83?

A. No sir.

Mr. Robertson: We offer Exhibit No. 83 in evidence.

Mr. Hite: We object to it.

The Court: Let me see, what is it.

Mr. Robertson: A check identified by Mr. Boyd a moment ago as having the signature of the defendant upon it.

Mr. Hite: Like to state our objection. We object to it for the reason the signature has not been properly verified or identified as the signature of the defendant, and call the attention of the court to the fact that witness Boyd in answer to the question as to whether that was the signature said "he thought so."

677 The Court: Do you know this signature?

A. Yes sir, I am acquainted with the signature.

Q. Acquainted with the signature of this defendant?

A. Yes sir.

Q. Seen him write?

A. I have been his checks pass through the bank different times.

Q. State whether that is his signature or not?

A. I think it is.

Q. Well what is your best impression about it?

A. Well that is my best impression about it.

Q. You have seen him write and seen his checks?

A. Yes sir.

The Court: Read it.

Mr. Hite: We renew the objection after the interrogation by the court.

The Court: Overruled.

Mr. Hite: Except.

Mr. Robertson: Reading Exhibit No. 83.

Mr. Hite: We would like to have an opportunity of looking at this before it goes in evidence, Your Honor.

The Court: Hand them to counsel so they may see what you propose to offer.

Mr. Robertson: Be glad to do so Your Honor.

Q. (A copy of Exhibit No. 83 is attached hereto and made a part hereof.)

Q. I call your attention to paper marked Exhibit No. 84 and ask you to state if you can whether that has been through your bank or not?

A. From all indications that it has.

The Court: Whose signature does it bear, if you know?

A. I think the signature of George S. Badders.

Mr. Robertson: We offer Exhibit No. 84 in evidence.

Mr. Hite: To which defendant interposes the same objections as made to Exhibit No. 83.

The Court: Objection overruled.

Mr. Hite: Except.

678 Mr. Robertson: Reading Exhibit No. 84.

(A copy of Exhibit No. 84 is attached hereto and made a part hereof.)

The Court: How is it endorsed? See if it is endorsed, and see whose endorsement it is, if payable to his order.

A. The other bore endorsement too.

Q. The other check?

A. Yes.

Q. And you said you identified that as the signature of George S. Badders?

A. The endorsement came to us through the clearing house and through another bank; the question was not asked and I didn't know you wanted that information.

The Court: The other was payable to cash, this seems to be payable to the order of Badders, Exhibit No. 84.

A. And that it was endorsed and cashed at another bank I think Mr. Robertson.

The Court: That is to say, it went through the clearing house?

A. Cashed at Merchants National Bank, another bank, not ours.

Mr. Robertson:

Q. But it came to your bank?

A. Yes.

Q. And it was then paid in your bank?

The Court: Let me see it.

Mr. Hite: We ask the witness be directed to testify as to what he actually knows about this matter; he says it was cashed at the Merchants National Bank; we submit there is no testimony of that kind unless Mr. Cobb personally knows that.

The Court: You have a clearing house in Topeka?

A. Yes sir.

Q. Those banks have a number attached to each one?

A. Yes sir.

Q. Your number is what?

A. One.

Q. What to your knowledge is the Merchants National Bank?

A. Number two.

679 Q. Number two.

Mr. Robertson:

Q. Look at the signature on the back of it; whose signature is that Mr. Cobb?

A. I think it is George S. Badders.

The Court: Have you any doubt about it?

A. No sir.

The Court: I don't care anything about the clearing house stamp on the back of the check; I asked the question because in reading the check it was payable to the order of George S. Badders and I wanted to know if George S. Badders endorsed the check. When you read that now you have the evidence in.

Mr. Hite: Note our exception to the ruling of the court.

(Continuing the reading of Exhibit No. 84.)

The Court: What is the date of it?

Mr. Robertson: December 17, 1913.

The Court: What is the date of the \$2,500?

Mr. Robertson: December 2, was Exhibit No. 83, \$2,500.

Q. I call your attention to Exhibit No. 85 and ask you to state whether that has been through your bank, the Bank of Topeka?

A. I think it has.

Q. Does it bear the signature of George S. Badders?

A. I think it does.

Q. Do you find any endorsements on it?

A. No sir.

Mr. Robertson: We offer Exhibit No. 85 in evidence.

Mr. Hite: To which defendant interposes same objection as to Exhibit No. 83 and 84.

The Court: Same ruling.

Mr. Hite: Except.

Mr. Robertson: Reading Exhibit No. 85.

(A copy of Exhibit No. 85 is attached hereto and made a part hereof.)

Q. I hand you a paper marked Exhibit No. 86 and ask you to state if you know Mr. Cobb whether you know that was  
680 issued by your bank?

A. It was.

Q. Look on the reverse side of it; do you find there the signature of the defendant George S. Badders?

A. Yes sir.

Q. State if you can to the jury whether that has been paid by your bank or not?



A. It has.

Mr. Robertson: Offer Exhibit No. 86 in evidence.

The Court: What is the date of that.

Mr. Robertson: January 14th, Your Honor.

The Court: 1914?

Mr. Robertson: Yes sir, 1914.

The Court: Well, read it.

Mr. Robertson: Reading Exhibit No. 86.

(A copy of Exhibit No. 86 is attached hereto and made a part hereof.)

Q. State if you know whether there was any money deposited by the Badders Clothing Company in the Bank of Topeka at any time after December 1913?

A. After December.

Mr. Hite: We object to that as incompetent, and for the reason that the witness has testified his connection with the Bank of Topeka did not begin until the first of February 1913; the objection is withdrawn if the witness knows.

A. The records show there *there* was after December first.

Mr. Hite: What the record may show, object to the witness stating.

A. I can answer the question; there were deposits made after December first, 1913.

Mr. Robertson:

Q. The question is whether there were any deposits made after the account was closed as shown by Exhibit No. 87?

A. There was none.

Q. During this period of November and December, 1913, and January 1914, state if you know whether George S. Badders personally had an account at your bank?

681 A. He did not.

Q. Mr. Cobb, are you acquainted with Mr. Mulvane, a lawyer who has his office in the same building your bank is in?

A. Yes sir.

Q. What is the name of that building?

A. Mulvane Building.

Q. Is there more than one Mulvane, a lawyer, with an office in that building?

A. No sir.

Q. Who else had an office, if any one, in the same quarters that Mr. Mulvane has his office?

A. Mr. C. E. Gault.

Q. And who else, if any one?

A. Well, not in the same quarters, no one else.

Q. I mean in the same suite of rooms there?

A. Mr. Hite.

Q. How are they connected together, if you know?

A. Well, there are doors that would connect the same suite of rooms.

Q. How long have the offices there been so occupied by Messrs. Mulvane, Gault and Hite?

A. Ever since I have been in Topeka, which has been about six years, probably longer.

### Cross-examination.

#### Questions by Mr. Hite:

Q. Mr. Cobb your duties in the Bank of Topeka do not require you to make entries upon any of the books known as the individual ledgers or checking account books, do they?

A. No sir.

Q. You have no personal knowledge of any of the transactions recorded in this transcript Exhibit No. 87, have you?

A. No sir I didn't do any of the work.

Q. Mr. Cobb will you have the kindness to point out on this Exhibit No. 87 where this check of six thousand dollars which you have identified appears?

A. It would appear on this date; the only reason I can tell you that is by reason of the date the check is stamped paid,  
682 and if there was more than one check they would all go in there as a lump sum, and evidently that amount is in this lump sum of \$6,319.74 on this date.

Q. You have no other knowledge of that circumstance at all have you?

A. No sir.

Q. Except what you infer?

A. From the way we keep our books.

Q. From the way you keep your books?

A. Yes sir.

Q. Now in reference to the matter of deposits, you had no personal connection with the receiving teller's window, had you?

A. No sir.

Q. And all that you know about this matter of the Badders Clothing Company's accounts is what your bookkeepers have made up and shown you, and what you have compared with the original entries, is that true?

A. That is all.

Q. And when deposits are made there are certain deposit slips made out by the depositor are they not?

A. Yes sir.

Q. Is that an invariable practice at the Bank of Topeka, to require those deposit slips to be made out?

A. Yes, occasionally a deposit slip might be made out by the receiving teller as a matter of accommodation, not often.

Q. Who keeps those deposit slips?

A. The bookkeeper files them.

Q. They are not returned to the depositor?

A. No sir, they are on file in the bank.

Q. So the deposit slips representing these deposits would be in the files of the Bank of Topeka, if they are correctly transcribed here?

A. Yes sir.

Q. Mr. Cobb, what officer of the Bank of Topeka, if you know, had transactions with Mr. Badders, was it you or some other officer of the bank?

A. Well I had a few personally, Mr. Mulvane had some.

Q. I said Mr. Badders, I should have said with the Badders Clothing Company account.

A. I thought that was what you intended.

Q. Yes sir. And did Mr. Mulvane handle that matter largely?

A. Largely, yes sir.

Q. And that was an account on the books of the bank when you went into the employ of the Bank of Topeka, was it not?

A. I think not.

Q. You think it came in after the first of February, 1913?

A. I am not positive as to that, whether he was doing business when I went there or not.

Mr. Hite: Before the witness leaves the witness stand we desire to renew our objection in view of his testimony concerning his want of knowledge of the transaction, to the introduction in evidence of Exhibit No. 87, and ask that it be withdrawn from the consideration of the jury.

The Court: You say in talking, you had some transactions with the Badders Clothing Company?

A. With Mr. Badders, president of that company.

Q. Was all the business you ever had with the Badders Clothing Company with Mr. Badders, himself, this defendant?

A. Yes sir.

The Court: The objection which you renew is overruled.

Mr. Hite: Except.

(Witness excused.)

MAY MALONE, called as a witness on behalf of the plaintiff, having been first duly sworn, testifies, as follows:

Direct examination.

Questions by Mr. Robertson:

Q. Where do you live Miss Malone?

A. Topeka.

Q. What is your business?

A. I am assistant treasurer of the Prudential Trust Company.

Q. Is the business of the Prudential Trust Company operated in the same building and on the same floor as the Bank of Topeka is operated?

A. It is.

Q. And that is in the Mulvane Building in Topeka, Kansas?

A. Yes sir.

Q. And are you acquainted with the defendant George S. Badders?

A. Yes sir.

Q. How long have you known him?

A. Well, more or less for the last ten or fifteen years.

Q. And how long have you occupied this position with the Prudential Trust Company?

A. Well I have been with them either in the trust company or their bank for the last seven years in an official capacity.

Q. In what capacity were you connected with the Prudential Trust Company throughout the month of January, 1914?

A. I was assistant secretary and assistant treasurer.

Q. Do you remember the occasion of Mr. Badders getting some gold from you about January 26, 1914?

A. Well I don't understand just how you mean to answer that.

The Court: Do you understand this question?

Mr. Robertson:

Q. You remember the occasion of Mr. Badders receiving some gold from you there in your capacity as an officer of the Prudential Trust Company, about the 26th of January, 1914?

A. Why I remember some of the circumstances, yes sir.

Q. Please state what you know about it?

A. You want me to begin just on that day?

Q. Well, did he get any gold from you on that day?

A. Yes sir, he did.

Q. How much?

A. I don't remember the exact amount of gold.

Q. Well do you remember the occasion of his getting a couple of sacks?

685 A. No sir, I don't remember that, I don't remember the circumstances.

Q. How much gold did he get?

The Court: Not how much; how did he get it; you don't give gold out without something goes in, do you?

A. No sir.

Mr. Robertson:

Q. How did he come to get it.

A. He brought back some bonds that he had previously purchased.

Q. How long before had he purchased those bonds of you?

A. A week before.

Q. Do you remember what that amounted to?

A. Seven thousand dollars.

Q. Now you say a week after he bought them he brought them back?

A. Yes sir.

Q. Then what occurred?

A. I gave him the money for them; I don't remember just the amount of gold nor the amount of money, in what form I gave the money.

Q. Well, now, just by way of refreshing your recollection, didn't you testify in this case at the bankruptcy trial in Topeka?

A. Yes sir.

Q. Do you remember what you testified to at that time?

A. Yes sir.

Q. Well, what did you say about it?

A. Well I said at that time, I think you will find, that I didn't remember the circumstances of the gold, whether it was when he bought the bonds or when he sold them; I can testify as to the amount of money he got.

Q. Well what was the amount?

A. The amount was seven thousand dollars.

Q. Now then did he give you some money in exchange for gold at the time?

A. I don't remember that; I have no way of verifying that,  
686 we don't keep a record of it.

Q. How did you come to give it to him all in gold?

A. I am not sure I gave it to him all in gold.

Q. Just state what you know about the circumstances?

The Court: Did he buy the bonds there at that place too?

A. Yes sir.

Q. You sell him the bonds?

A. Yes sir.

Q. How did he pay you for them?

A. Paid me in money.

Q. What kind of money?

A. Gold and currency, I don't remember the exact amount of each.

Q. Then he brought the bonds back a week later?

A. Yes sir.

Q. And you gave him money back?

A. Yes sir.

Q. The exact amount of gold and the exact amount of currency you gave him you don't remember?

A. No sir.

Mr. Robertson:

Q. If you were to see the testimony that you gave upon the bankruptcy trial would that refresh your memory of what happened?

A. Why I think I have seen it, and I tried to verify it from the records and from the paying teller's records and I couldn't come any nearer a conclusion than I had before, and so I wouldn't be willing to say just what I did give or get.

Q. Well, you testified upon that hearing, didn't you?

Mr. Hite: Object to this cross examination.

The Court: I don't think it is necessary; if he got seven thousand dollars in money out of there, I don't know how material it is; green-

backs are about as good as gold. Want to ask any questions on the other side.

Mr. Hite: No sir.

(Witness excused.)

687 THEO C. MUELLER, called as a witness on behalf of the plaintiff, having been first duly sworn, testifies, as follows:

Direct examination.

Questions by Mr. Robertson:

Q. What is your name?

A. Theo C. Mueller.

Q. Where do you live?

A. Topeka, Kansas.

Q. What is your business?

A. President of the German American State Bank.

Q. How long have you held that position?

A. A little over a year as president.

Q. Are you acquainted with the defendant George S. Badders?

A. Yes.

Q. How long have you known him?

A. Well I should think two years possibly.

Q. I hand you a paper marked Exhibit No. 34 and ask you if you have seen that before? The date, which is obliterated, is December 29, 1913?

A. Yes sir.

Q. Are you acquainted with Mr. Guggenheim of the Stein-Bloch Company?

A. I met him.

Q. Wish you would state to the jury just what you know about this check Exhibit No. 34, and what, if anything, you had to do concerning it, with the defendant Badders?

A. Well, the check in the first place was sent to us I believe it was sent to the bank and presented for payment by Mr. Guggenheim, after which it was returned to his company I think by him, and then sent to the bank for collection.

Q. Now after you received this check did you have a conversation with Mr. Badders?

A. At which time, the first or second time.

Q. Well, either time?

A. After the second presentation?

Q. After the second presentation?

688 A. Yes sir.

Q. At this time, state, if you know, whether the Badders Clothing Company had a deposit in your bank?

A. They had a small deposit.

Q. What was the size of it, if you know?

A. Ten Dollars.

Q. And when had that deposit been made, if you know?

A. December 26, 1913.

Q. Had the Badders Company been maintaining a deposit there during the months immediately preceding the date of that ten dollar deposit?

A. No sir.

Q. Or have they since maintained any?

A. There is a very small balance there yet.

Q. Was there any other deposit made with you after that time by this company?

A. No sir.

Q. Now then upon the occasion of the second presentation you say you had some conversation with Mr. Badders?

A. Yes sir.

Q. Just tell the jury what that was and how it occurred?

A. Well, as I recollect it, Mr. Badders was called to the bank and the check was presented to him, at which time he stated that he had money to take it up, but in as much as it had not been presented through the regular channels he refused payment of it.

Q. Was Mr. Guggenheim there at the time?

A. He was not present with Mr. Badders and myself.

Q. Was he at the bank?

A. Yes sir.

Q. What if anything did the defendant Badders say there as to the kind of money he had to pay this with?

A. He stated he had gold.

Q. Had gold to pay it?

A. Yes sir.

Q. Did you see any gold?

A. No sir.

689 Q. Did you hear any?

A. No sir.

The Court: What is the amount of that?

Mr. Robertson: \$3,366.81.

The Court: Was that drawn on the bank of which this man was an officer. This drawn on your bank, German American State Bank?

A. Yes sir.

Q. Were there any other checks presented to you upon that account known by you to bear the signature of the defendant?

Mr. Hite: Objected to as hearsay.

The Court: There were two of these checks, wasn't there?

Mr. Robertson: Yes, and there are still others.

Mr. Hite: We ask if there are others that they be shown to the witness, otherwise the testimony is objected to as incompetent and secondary.

Mr. Robertson:

Q. Have you any other checks with you that were presented on that account?

A. Yes sir.

Q. Have you them in your pocket?

A. Yes sir.

Q. Let me see them; have you the Burnham-Munger?

A. I only have the one for eight dollars, that the only one.

Q. Had the defendant Badders had or kept a personal account at your bank during the year 1913?

A. No, sir.

Q. Ask you to state whether the defendant Badders is indebted to your bank?

A. We have a judgment.

Q. For how much?

A. Five thousand dollars.

Q. Have you endeavored to collect it?

A. We have.

The Court: When was that judgment entered?

A. I don't remember the date, I think something like a year ago.

690 Q. What was it for, a note?

A. Yes sir, promissory note.

Q. A note you had recovered on?

A. Yes sir, that we had discounted.

Mr. Robertson:

Q. What have you done towards the collection of the judgment Mr. Mueller?

Mr. Hite: Objected to as not material.

The Court: Have you had an execution issue from the clerk's office on the judgment or not; do you know?

A. No sir, not to my knowledge.

Q. Have you talked with Mr. Badders about that judgment at any time?

A. No sir.

Q. When was the note executed upon which you received the judgment?

A. I think it was in 1911.

Q. 1911?

A. I am not sure about that, it was either 1912 or 1911.

Q. Was that his individual note or the note of the company?

A. His individual note.

Q. How was it secured, if at all?

A. By endorsement.

Mr. Robertson:

Q. Have you made or caused to be made a search to learn whether Mr. Badders had any property that you might reach in payment of the judgment?

A. I did through our attorney.

Q. Who was your attorney?

A. Mr. McKeever.

Q. This Mr. McKeever sitting here?

A. Yes.

The Court: Well that debt, how long past due was the note when you brought suit?



A. When we brought the suit it was about a year.

Q. A year past due?

691

A. Yes sir.

Q. Had you asked him to pay this debt any time after it became due?

A. Yes sir, he was asked to pay it.

Q. You never got the money?

A. No sir.

Q. Still outstanding and still due you?

A. Yes sir.

Q. And was due you in November 1913?

A. Yes sir.

Q. And in December 1914?

A. Yes sir.

Q. Been due ever since it was matured, that is to say, nothing paid on it since it was matured?

A. No sir.

Cross-examination.

Questions by Mr. McKeever:

Q. Mr. Mueller, that note was the subject of quite a vigorous law suit, was it not?

A. Yes sir.

Q. In which Mr. Badders contended the endorser was liable?

A. Yes sir.

Q. And the endorser owed him something as a set-off?

Mr. Robertson: Objected to as not the best evidence, not cross examination, immaterial.

The Court: Was there a judgment entered in the case? I am asking you. I want to ask you whether there was a judgment entered against him at the time or whether any defense was made?

Mr. McKeever: There was a judgment and a defense; there was no defense the day of the trial, so far as he was concerned; there was by the endorser, as I recollect it.

Questions by Mr. McKeever:

Q. Mr. Mueller how did you happen to call Mr. Badders down to the bank on the second presentation of that check?

A. The check was sent to the bank for collection.

Q. Didn't Mr. Guggenheim ask you to call him down there?

692 A. Well Mr. Benson called Mr. Badders by phone.

Q. That is true, but didn't Mr. Guggenheim in your presence ask you or Mr. Benson to call Badders down there?

A. Yes sir.

Q. He came down there first, did he?

A. Who is that?

Q. Mr. Guggenheim?

A. Yes sir.

Q. What did he say when he asked Mr. Benson to call him?

A. That he wanted the check presented and see what Mr. Badders had to say regarding payment of it.

Q. He was there when Mr. Badders came, wasn't he?

A. Mr. Guggenheim?

Q. Yes?

A. Yes.

Q. Was he where Mr. Badders could see him?

A. I don't think so.

Q. Did he tell you he would conceal himself and hear what Mr. Badders had to say about it?

A. I couldn't hardly say as to that.

Q. Tell us what he did say, to the best of your recollection?

A. He was in a different part of the room, and I don't believe he could hear anything that was said.

Q. What did he say about what he would do, in your presence, to Mr. Badders when Mr. Badders did come down?

A. I don't recollect.

Q. Well, before Mr. Badders came he did retire to a back room, did he?

A. Yes sir.

Q. And remain there while you were talking to Mr. Badders?

A. Yes sir.

Q. And was he within hearing of your talk, do you know?

A. I don't think so.

Q. Did he ask you to talk so he could hear you?

A. No sir, I don't think so.

Q. Now Mr. Badders announced to you that he was ready to take this note up if it came through the proper channels, didn't he?

693

A. The check you mean?

Q. The check I should say?

A. Yes sir.

Q. He told you, did he not, that it would hurt a merchant's credit to have a note presented by the bank and paid direct to a foreign—the representative of a foreign creditor and have that matter reported through the commercial agency.

Mr. Robertson: Object to that as testimony of the counsel.

Mr. McKeever: I am asking if he didn't say that to him?

The Court: Well, I don't know what there is about it, if he owed the money, and drew a check on a bank and went there, and a man concealed himself or hid himself to hear what the conversation was, I don't see as it is material, I don't think it can become material; we are not trying Guggenheim here; if there is anything here about the check except the very question you say was raised, that he wouldn't pay it because it didn't come through the proper channel; he said Badders said he wouldn't pay that check, had the money to pay it, but wouldn't pay it because it did not come through the proper channel. Ask him what Badders said; ask him to go over the whole evidence.

Mr. McKeever:

Q. Tell what else Mr. Badders said that you can recall in connec-

tion with this payment again; that he would pay it if presented through the proper channels and came through the clearing house; now what else do you recall he said at the same time?

A. There wasn't much else said; I presented the check to Mr. Badders and he stated he would pay the check if it had come through the regular channel.

Q. That is all you remember about that?

A. That is about all; he made some other assertions there I don't remember.

Q. Did Mr. Guggenheim when he retired to the other room tell you not to tell Mr. Badders he was there?

A. I don't remember as to that.

694 Q. Did he tell Mr. Benson that in your presence or anybody else?

A. I don't remember.

Q. Do you remember what he did say?

A. No sir.

Q. I will ask you Mr. Mueller about the time the judgment was rendered against Mr. Badders if a petition in involuntary bankruptcy was not filed against him? To your knowledge?

A. I couldn't state.

Q. You do know that a petition in involuntary bankruptcy was filed?

Mr. Robertson: Objected to as not cross examination, immaterial.

The Court: Well what *that can* have to do with the payment of the note?

Mr. McKeever: Because Your Honor asked a good many questions about whether he had paid it or not, and that goes to show why it couldn't be paid from that time on.

The Court: He said he had not paid it and the bankruptcy proceedings were commenced and you knew it?

A. Yes sir.

Q. You didn't know it before you sued, did you?

A. No sir.

Redirect examination.

Questions by Mr. Robertson:

Q. When were the personal bankruptcy proceedings brought against George Badders personall-, not against the company?

A. We had a card, I believe, Mr. Robertson, it was Mr. Badders.

Q. You remember when?

A. No, I do not.

Q. Considerable time after the case against the corporation?

Mr. Hite: The date of that is here in the files, Your honor.

The Court: It makes no difference, as I can see.

Mr. Robertson: Withdraw the question.

The Court: Wasting time on matters that are utterly immaterial.

(Witness excused.)

695 Mr. Robertson: We desire to offer in evidence Exhibit No. 88.

Mr. Hite: We do not see that it is material at all, Your Honor; we object to it for that reason.

The Court: I don't know what is in the paper.

Mr. Robertson: Statement of property listed for taxation 1913 by George S. Badders.

Mr. Hite: Filed in March, 1913, Your Honor, for the taxes of 1912.

Mr. Robertson: For the taxes of 1913, I beg your pardon, sir.

The Court: You don't run backwards up here in this country, do you?

Mr. Hite: We do sometimes, Your Honor.

The Court: Does that purport to be his return?

Mr. Robertson: Yes sir.

The Court: Well, ready it.

Mr. Hite: Except.

Mr. Robertson: Reading Exhibit No. 88.

(A copy of Exhibit No. 88 is attached hereto and made a part hereof.)

SAMUEL BARNUM, called as a witness on behalf of the plaintiff, having been first duly sworn, testifies, as follows:

Direct examination.

Questions by Mr. Brady:

Q. What is your name?

A. Samuel Barnum.

The Court: How do you spell it?

A. B a r n u m.

Mr. Brady:

Q. Where do you live?

A. Topeka, Kansas.

Q. What is your business?

A. Attorney at law.

Q. You were there during the year 1913?

A. I was.

696 Q. Do you know the defendant George S. Badders?

A. I do.

Q. And how long have you known him?

A. For about nine and a half or ten years.

Q. And did you have a business transaction, or conversations with Mr. Badders during the month of December, 1913?

A. Well, I had a conversation, it is my recollection either in latter part of December 1913 or the first part of January 1914.

Q. And what was the occasion of your going to see him?

A. I presented an account which had been handed to me by Mr. Dale who has testified.

Q. What was it for, for collection?

A. It was an account for collection.

Q. And did you have a conversation with Mr. Badders in reference to his paying that bill?

A. I did.

Q. I wish you would state to the jury what he said about it?

A. I advised Mr. Badders that a proposition of settlement I understood he had made had been accepted by the client, and Mr. Badders stated that they were formulating a reorganization of the company and he couldn't do anything at that time, but would somewhat later, I don't remember just how long, a few days or a week later, is the recollection I have of it.

Q. Did you succeed in collecting it?

A. I did not.

Q. What was the amount?

A. I couldn't give it to you exactly, about eighty dollars, I think it was, a small amount.

Q. And did he state anything else in reference to not being able to pay it?

A. He didn't say anything else about not being able to pay it; I called on him again in reference to this same account and he stated that he had not been successful in formulating that reorganization scheme; and further stated these people had not treated him  
697 right and refused to pay the account at that time.

Q. Did you have any other accounts against him?

A. A number of them but I don't recall having taken the matter up with him personally.

Q. Do you know the total amount of accounts you had against him for collection?

Mr. Hite: Objected to as incompetent, and hearsay.

The Court: That may be. Sustained.

Q. That is all unless you had another conversation with him?

A. No, those are all the conversations I had with him.

Cross-examination.

Questions by Mr. Hite:

Q. You say the first conversation was the latter part of December or the first of January?

A. I know it was after Christmas I don't know the exact date.

Q. What was it Mr. Badders then said to you?

A. I can't give you the exact words.

Q. No, of course.

A. That they were trying to reorganize and that the plan had not materialized as yet.

Q. Then you saw him later?

A. Possibly a week later I saw him, when he stated things hadn't progressed and refused to pay the account for the reason that he didn't think he had been treated right by these people.

The Court: By what people?

A. The people whom I represented, the Auto Glove Company I think was the name of the concern.

Q. There had been some dispute over the account had there Mr. Barnum?

A. No I couldn't say as to that, the matter had been handled by Mr. Dale and Mr. Dale had asked me to submit a proposition, if I may answer as to what some one else said.

Q. Yes?

A. And I submitted the proposition and received authority to accept it and went to Mr. Badders there for the purpose of  
698 obtaining payment in accordance with the proposition submitted; that was the occasion of my first presentation of the claim to Mr. Badders.

Q. I understand from your whole statement here Mr. Barnum that there had been some dispute between the Badders Clothing Company or Mr. Badders and this Glove Company?

A. I have no recollection of that; I didn't expect to testify as to that point, it just occurred to me since I was down here I had made those visits to Mr. Badders.

(Witness excused.)

SAMUEL BAUM, called as a witness on behalf of the government, having been first duly sworn, testifies, as follows:

Direct examination.

Questions by Mr. Brady.

Q. What is your name?

A. Samuel Baum.

Q. Where do you live?

A. Topeka, Kansas.

Q. What is your business?

A. Buyer for the August Clothing Company.

Q. Buyer for who?

A. August Clothing Company.

Q. Of Topeka, Kansas?

A. Yes sir.

Q. Do you know the defendant George S. Badders?

A. Yes sir.

Q. How long have you known him?

A. About a couple of years.

Q. Do you remember of having a business transaction with him in the month of December, 1913?

A. Yes sir.

Q. What time in the month?

A. December the 30th.

Q. 30th of December?

A. Yes sir.

699 Q. And where was that transaction had?

A. In the store.

Q. How did you come to go to his store?

A. Mr. Badders asked me to buy the goods.

Q. What goods did he ask you to buy?

A. Boys' clothing and gents' furnishing.

Q. Boys' clothing and gents' furnishing goods; and did he speak to you about that more than once?

A. Twice.

Q. Before you went to the store?

A. Yes.

Q. The second invitation you went over?

A. Yes.

Q. And when you went over what did you do there?

A. I bought his stock.

Q. Did you examine what goods he had on hand, gents' furnishing- and children's clothing?

A. Yes, sir.

Q. And did you pick out any of the articles or all of those articles?

A. No, just the boys' clothing and the boys' — gents' furnishing-. That is all I bought.

Q. Did you make an invoice of what you were getting there?

A. No, sir.

Q. How did you arrive at the value of it?

A. What do you mean?

The Court: Did you buy the goods?

A. Yes, sir.

Mr. Brady:

Q. How many did you buy?

A. Well I don't know I didn't take the stock.

Q. How much money paid for them?

A. Three hundred and twenty dollars.

Q. Three hundred and twenty dollars?

A. Yes, sir.

Q. How did you arrive at the price which you were to pay for them?

700 A. I told him the goods were worth to me three hundred and twenty dollars and that was what I offered him.

Q. Have you a knowledge of the values or cost values or wholesale price of the goods you bought?

A. I ought to.

Q. How many years' experience have you had along that line?

A. About ten years.

Q. Well, do you have a knowledge on that line?

A. I guess it must have been six hundred or six hundred and fifty dollars.

Q. Six hundred and fifty dollars would be the wholesale value?

A. Yes.

Q. And what did you pay him for these goods?

A. Three hundred and twenty dollars.

Q. How long were you there before you finally succeeded in making this deal?

A. A couple of hours.

Q. Have you the check?

A. I think so. (Producing a paper.)

Q. And do you know who wrote that check?

A. Mr. August.

Q. The proprietor of the August Clothing Company or the owner?

A. Yes, sir.

Q. And when he wrote the check what did he do with it?

A. I gave it to Mr. Badders.

Q. Mr. August handed it to you and you gave it to Mr. Badders?

A. Yes, sir.

Q. In payment for this amount of goods?

A. Yes, sir.

Q. What time of day was it?

A. Between two and three o'clock.

Cross-examination.

Questions by Mr. Hite:

Q. You took the entire stock of children's clothing that was bought there did you?

701 A. What was there yes, sir.

Q. Was there any new stock there?

A. Not as I know.

Q. All old?

A. I don't know whether it was old or new, got just what was there.

Q. You don't know what was there?

A. No, sir.

Q. This transaction really took place between Mr. August and Mr. Badders, didn't it?

A. No, sir.

Q. Hadn't they been negotiating for Mr. August to take over the children's clothing department of the Badders Clothing Company?

A. What is it?

Q. Had not Mr. Badders and Mr. August been negotiating so as to close out the children's department of the Badders Clothing Company?

A. No, sir.

Q. Why do you say no, sir?

A. Because I bought it, I was the one that transacted the business.

Q. I was asking you if there had been any negotiations between Mr. August and Mr. Badders, if you know?

A. No, sir.

Q. You don't know whether there were or not, do you? All that you know about the matter is that you went over there and bought this lot of children's clothing and gave a check for three hundred and twenty dollars that Mr. August gave you, is that all you know about it?

A. Yes.



Redirect examination.

Questions by Mr. Brady:

Q. Who does all the buying for the August Clothing Company?

The Court: Don't make any difference, you should have asked that in chief if you wanted to get that at all.

(Witness excused.)

702      ARTHUR M. MILLS, called as a witness on behalf of the plaintiff, having been first duly sworn, testifies, as follows:

Direct examination.

Questions by Mr. Brady:

Q. What is your name?

A. Arthur M. Mills.

Q. Where do you live?

A. Topeka.

Q. How long have you lived there?

A. Thirty two years.

Q. Do you know the defendant George S. Badders?

A. Yes, sir.

Q. What is your business?

A. Dry goods business.

Q. How many years have you been in that business.

A. I have been in Topeka thirty two years.

Q. And you have had experience then for all those years?

A. Yes, sir.

Q. And did you upon any occasion have a business transaction with Mr. Badders of the Badders Clothing Company in which you bought some goods?

A. Yes, sir.

Q. And did you attend to that transaction yourself?

A. Yes, sir.

Q. And how did you come to buy the goods?

A. Mr. Badders notified us that he had some ladies' hosiery, ladies' silk hosiery that he wanted to dispose of and made us a price on them.

Q. And did you go and examine the goods?

A. Not at that time.

Q. Did you later?

A. Yes, sir, I did not personally.

Q. And did you have a knowledge and judgment as to the value of such goods as they were?

A. I did not go personally Mr. Brady; I sent the head of our hosiery department.

703      Q. And did you see the goods?

A. Not until they were delivered at the store?

Q. And you did not see them until they were delivered to your store; and did you examine them as to their worth or value?

A. Yes, sir.

Q. And from your knowledge and experience did you know what the wholesale value would be of those goods at that time?

A. Yes, sir.

Q. About what would it be?

Mr. Hite: Object to that Your Honor; does not make any difference what it would be.

The Court: What did you give for them?

A. Gave eighty five cents on the dollar on the New York cost.

Q. Eighty five cents on the dollar on the New York cost?

A. Yes, sir.

Q. And when was that transaction?

A. In November, 1913; I can't tell the date.

Mr. Brady: In the latter part of the month?

A. Yes.

#### Cross-examination.

#### Questions by Mr. Hite:

Q. Now Mr. Mills, the Mills Dry Goods Company is a ladies' dry goods establishment, is it not?

A. Yes, sir.

Q. And carries ladies' goods, including ladies' hosiery?

A. Yes, sir.

Q. The Badders Clothing Company was a gents' furnishing goods establishment, was it not?

A. Yes, sir.

Q. Mr. Badders desired to sell all the ladies' hosiery, did he not?

A. Yes, sir.

Q. That was his price?

A. Yes, sir.

704 Q. And you didn't want anything but the black, is that the fact?

A. Yes, sir.

Q. This was Phoenix hosiery, was it not?

A. Yes, sir.

Q. Mr. Mills do you know of the special trade discount on the Phoenix hosiery?

A. I think I do.

Q. When you speak of New York prices do you take that into consideration?

A. No, sir. That is the cash discount.

Q. What is the regular discount Mr. Mills?

A. The cash discount?

Q. Yes, sir?

A. It is six, ten, five, thirty.

Q. And what is the special discount?

A. There is none that I know of.

Q. So if Mr. Badders got a special discount you are not aware of that fact?

A. No, sir.

Q. You don't know Mr. Mills what these ladies' hose that he sold cost Mr. Badders do you?

A. I do not.

Q. The arrangement was that you should pay eighty five per cent of the New York price, is that right?

A. Yes, sir.

Q. And you did pay that price?

A. Yes, sir.

Q. The check was drawn to the order of the Badders Clothing Company for it?

A. Yes, sir.

Q. Turned over in regular course of business?

A. Yes, sir.

Redirect examination.

Questions by Mr. Brady:

Q. What was the amount of the check Mr. Hite asked you about?

705 A. It was something over three hundred dollars, I am not quite sure, it has been so long since, something over three hundred dollars.

Q. Is this the check?

A. Yes, sir.

Mr. Brady: We offer the check in evidence and ask to have it marked Exhibit No. 89.

The Court: That is the check he gave for the goods.

Mr. Brady: Yes, Your Honor.

(A copy of Exhibit No. 89-A is attached hereto and made a part hereof.)

(Witness excused.)

JOSEPH MYER, called as a witness on behalf of the plaintiff, having been first duly sworn, testifies, as follows:

Direct examination.

Questions by Mr. Robertson:

Q. State your name?

A. Joseph Myer.

Q. Where do you live Mr. Myer?

A. Kansas City, Missouri.

Q. What is your business?

A. I am vice president and bookkeeper of the Empire Cap Manufacturing Company.

Q. Calling your attention to the paper marked Exhibit No. 70, ask you if you have seen that before?

A. I have.

Mr. Robertson: We offer Exhibit No. 70 in evidence. It has been identified by a witness here to be the signature of the defendant.

Mr. Hite: We object to this for the reason that the signature of the defendant has not been properly identified. In that connection

I call the court's attention to the fact that the witness Boyd in attempting to identify the paper said he thought that was the signature.

The Court: Objection overruled.

706 Mr. Hite: Except.

Mr. Robertson: Reading Exhibit No. 70.

(A copy of Exhibit No. 70 is attached hereto and made a part hereof.)

Q. This Exhibit No. 70 speaks of a telephone conversation; did you have that conversation with Mr. Badders?

A. I did not, the president of the company had it.

Q. Was you on the line, did you hear the conversation?

A. No, I did not hear the conversation.

Q. Is your company one of the creditors at this time of the Badders Clothing Company?

A. Yes, sir.

Q. In what sum?

Mr. Hite: Object to that unless the witness knows. Like to ask the witness on his voir dire as to what he knows about the indebtedness, with Your Honor's permission.

The Court: Yes.

Mr. Hite:

Q. Are you one of the salesmen of the Empire Cap Company?

A. I, no, sir.

Q. Did you ever sell Mr. Badders or the Badders Clothing Company any goods?

A. I did not.

Q. Do you know of your own knowledge of any goods ever having been sold to him, except as you got that from the books?

A. How?

Q. Do you know of your own knowledge of any goods having been sold to the Badders Clothing Company by the Empire Cap Company except as you get the information from the books, or some one else?

A. I don't exactly understand what he is saying.

The Court: That letter speaks of paying you at a certain time; you know how much he owed at that time, from your own knowledge from the books?

A. Yes.

Q. State what it was?

A. Three hundred and five dollars and twenty five cents.

707 Mr. Hite:

Q. Do you know that from the books?

A. I do.

Q. Is that the only way you know it?

A. I made out the bills and bill them out the goods.

Q. And you made out the bills for the goods?

A. I bill them out the goods.

Q. Well what do you mean by that?

A. Sent the invoices for the goods.

Q. And you made up that invoice from the books?

A. I did.

Q. And that was all you know about it?

A. No, I know the goods were sent to them too.

Q. That was what I was trying to get at; did you see the goods sent?

A. I saw the bill of lading and knew the goods were shipped.

Q. Well is that all you know about it?

A. That is all I know about it.

Mr. Hite: We think the witness' testimony is hearsay and object to it for that reason.

The Court: Well, you have the letter in reference to an indebtedness proven to have been signed by George S. Badders; this witness is asked how much Badders owed the company of which he was vice president, after introducing that letter, which acknowledges an indebtedness, and he says it is three hundred dollars. Objection overruled.

Mr. Hite: Except.

Mr. Robertson: Did you ever get your money?

A. Never did.

Cross-examination.

Questions by Mr. Hite:

Q. Did you know of the petition in bankruptcy filed against the Badders Clothing Company?

A. Why I heard of it yes.

Q. Do you know when that was filed?

A. No, I don't.

708 Q. Some time about a year ago, wasn't it?

A. Why I think something like that.

(Witness excused.)

Mr. Robertson: The remainder of the proof in this case, Your Honor, is largely formal. None of the count letters have yet been identified nor none of the charters of corporations in question introduced. I think, if Your Honor please, there will be three counts on which, for technical reasons, we will be unable to make the proper proof required under the statute.

The Court: What counts are those?

Mr. Robertson: I can say now the first one.

The Court: Count one. Well, if you will go on with your proof Mr. District Attorney, and when you offer any letter say in which count that is made, why we will find out when you get through how many you fall short of in the proof. I suggest, Mr. District Attorney, you offer your formal proof as to the mailing of these letters, and say upon which count it is connected.

Mr. Robertson: I will, Your Honor. We have alleged the existence of certain artificial persons and have to prove their existence. Now if you will call Mr. Levy.

The Court: I will allow you, Mr. District Attorney, in regard to

this formal proof, in order to save time, you may present it in the morning.

Mr. Robertson: I can present this one now if Your Honor wishes.

709 I. W. LEVY, called as a witness on behalf of the plaintiff, having been first duly sworn, testifies, as follows:

Direct examination.

Questions by Mr. Robertson:

Mr. Robertson: I ask counsel for the defendant if they are willing to admit that Cohen & Lang is a corporation, as alleged in the indictment?

Mr. Hite: The defendant admits that Cohen & Lang is a corporation as alleged in the indictment.

The Court: Then no need of any proof of that.

Mr. Robertson: Count two.

Q. What is your name?

A. I. W. Levy.

Q. Where do you live Mr. Levy?

A. New York, New York.

Q. What is your business?

A. Office manager for Cohen & Lang.

Q. How long have you filled that position?

A. Nine years.

Q. I hand you papers marked Exhibit No. 72 and Exhibit No. 89, respectively, and ask you to state if you know whether these were received by your company, Cohen and Lang, through the regular course of the United States mail?

Mr. Hite: Just a moment, I didn't get the numbers of those exhibits.

A. Seventy two and eighty nine.

The Court: What counts are those on?

Mr. Robertson: That is on count two.

Mr. Hite: And we object to the question Your Honor, as calling for the conclusion of the witness, and ask he be required to state how the letter was received, if he knows.

Mr. Robertson:

Q. How was the letter received Mr. Levy, if you know?

A. It was received through the mails.

Mr. Hite: That has reference now to Exhibit No. 72.

710 A. Both seventy two and eighty nine.

Mr. Robertson:

Q. Did you receive these personally yourself?

A. I did.

Mr. Robertson: We offer these exhibits, numbers seventy two and eighty nine in evidence.

The Court: Let me have the indictment.

Mr. Hite: Your Honor, the defendant would like to have an opportunity of comparing these originals with the indictment before interposing any objection that he may be advised as to them, but, however, not delay the cross examination of the witness, but ask this not be passed upon until we formulate an objection, if we have one.

The Court: I suppose this witness is called for identification of these particular letters, as having been received; that what you want?

Mr. Robertson: And possibly the conversation he had with Mr. Badders.

Mr Hite: We ask that these be suspended until we can offer what cross examination we may have. I understand Your Honor to say the government would probably only take the one this evening.

The Court: I am perfectly willing to grant a reasonable opportunity to examine any paper. Now these letters that are counted upon in this indictment are the letters, as I understand it, that you have claimed to have identified by the testimony already in.

Mr. Robertson: Yes sir.

The Court: And the question is, as to whether or not these letters are the same letters that are counted upon in the indictment, and counsel ask for an opportunity of examining these to see whether or not the letter that is now offered is in accordance with the charge in the indictment. I think that is reasonable request, and I am going to let him do it.

Mr. Robertson: If Your Honor please, counsel has for some weeks had copies of all these.

The Court: Does not matter whether had copies or what not; may be the originals are not right; they want to examine  
711 these letters; you understand, that as far as this matter is concerned, this part of the testimony in reference to the mailing of the letters, putting them into the mail, is quite as important a part of the indictment as the first, and you will furnish him—let him see those papers, and let him compare them with the indictment, if he wants to, and he can have somebody read the indictment.

Mr. Hite: That is what I want to do Your Honor. But I don't want to delay the examination of this witness if the court desires to go on with it.

The Court: What do you propose to examine him about except the receipt of these letters; now as I understand from this witness, he identified the letter and the envelope as having been received by him in New York.

Mr. Robertson: Yes sir.

The Court: Through the United States mails.

Mr. Robertson:

Q. You received this where?

A. At New York, New York, at my office, office of Cohen & Lang.

The Court: Is the time of the receipt of these letters stamped on them?

A. The stamp was put on the letter the first thing in the morning; it was the first mail which I received that morning.

The Court: That is, you have a custom there, when you receive a letter it is stamped as to the time when you get it?

A. If you please, Your Honor, we make a system that the only mail that is stamped is what we receive in the morning, the first mail, and this letter was received the first mail in the morning by myself.

The Court: And through the United States mail?

A. Yes sir.

The Court: Now if there is any other matter.

Mr. Robertson: A conversation I wish to ask about.

The Court: This letter is already shown to have been received by this witness.

712 Mr. Hite: Subject to our cross examination.

The Court: Of course. I only want to hasten the matter as fast as I can. Go on sir and examine about anything else.

Mr. Robertson: I want to call Your Honor's attention to it, and the attention of counsel, to some lead pencil notations made at some time on the back, and the government is not offering those notations made on the back of the sheet.

Mr. Hite: That is one thing, I want to examine this and see.

The Court: He may examine these and see.

Mr. Robertson:

Q. Have you met Mr. Badders personally, Mr. Levy?

A. I have not.

Q. Did you have some business with him?

A. Yes sir.

Q. Did you ever talk to Mr. Badders?

A. Not I, no.

The Court: He says he never had a conversation with him.

Mr. Robertson:

Q. Ever hear a conversation had between him and another?

A. Yes sir, I heard a conversation.

Q. Where did that occur?

A. In the office of Cohen & Lang, in Mr. Lang's private office adjoining mine.

Q. Were you present?

A. I was not present.

Q. Is Mr. Lang sick and unable to be here?

A. Yes, unfortunately Mr. Lang has been sick for two months.

Q. State what that conversation was, so far as you heard it?

A. It was that Mr. Badders and Mr. Boyd, after Mr. Badders and Mr. Boyd had selected a bill amounting to close onto nine hundred dollars, was brought into the office—

Mr. Hite: Pardon me Mr. Levy, are you stating the conversation now or something leading up to it?

A. I am not stating the conversations, I am leading up to it.



Mr. Hite: Will you be good enough to confine yourself to the conversation you overheard.

713 A. Mr. Lang asked Mr. Badders, "How is it Mr. Badders you are purchasing this kind of merchandise at this time of the season?" Mr. Badders answered, "You see, Mr. Lang, I had purchased considerable amount of merchandise at the early part of the season, and finding that the season did not look to me as if it was going to be a good one, I cancelled this merchandise that I had previously purchased from other creditors; the prospects are good for a sale in my city, and knowing that I am not in a position to get merchandise from those creditors I had cancelled my previous orders, I came on to New York for the purpose of buying merchandise preparatory for the sale." Then Mr. Lang asked him—

Q. What further did you hear there, if anything, between them?

A. Mr. Lang then asked him, "Mr. Badders, are you prepared to pay this on a nine or ten day basis?" And Mr. Badders answered he was. Mr. Lang then asked Mr. Badders, "From whom else have you made purchases?" And Mr. Badders gave him several names of New York manufacturers. And Mr. Lang put those names down and Mr. Boyd and Mr. Badders both left the office, to the best of my recollection.

Q. Do you know whether Mr. Badders selected a bill of goods there or not at your house, do you know personally?

A. Yes I knew he did.

Q. How large a bill, if you know?

A. Close onto nine hundred dollars.

Q. State if you know whether the goods were shipped?

A. The goods were shipped the next day; pardon me, the goods were shipped the very identical day he placed the order, I think, on November 20, 1913.

Q. Did Mr. Badders receive the goods, if you know?

A. The shipment made on that date, November 20th, was recalled by me on November 21st.

Q. Were the goods brought back?

A. The goods were brought back.

Q. From where, if you know?

714 A. I believe they was caught at Buffalo, New York.

Q. Now then did you later reship them to him?

A. Yes sir, on December 5, 1913.

Q. How did you come to do that.

Q. Beg your pardon.

Q. How did you come to do that? Just a moment, were you attending to this personally yourself?

A. I was, yes sir.

Q. All right?

A. On November the 21st of 1913 I recalled those goods after learning between November 20th and November the 21st that Mr. Badders—

Mr. Hite: Just a moment.

The Court: Need not state what you heard.

Q. You recalled the goods on the 21st and sent them on another day afterwards?

A. On December 5th.

Q. Did he receive those of your knowledge?

A. Yes sir.

Q. Or did you receive anything from him?

A. I received nothing from him after he had received the merchandise.

Q. That is to say you received no money?

A. Yes sir.

Q. Did you send a bill of lading, send him the bill out?

A. Yes sir.

The Court:

Q. Now is that one of the bills about which the bookkeeper testified here as being due?

Mr. Robertson: I think it was Your Honor, yes.

Mr. Harkless: Desire to object to the court's statement, "the bookkeeper testified to a bill being due."

The Court: I asked if this account you are now seeking to prove by this witness was included in the statement made by the bookkeeper of the indebtedness of the Badders Clothing Company.

Mr. Harkless: No objection to that; he didn't state they were due, any of them.

Mr. Robertson: I would want to verify that to be sure about  
715 it.

The Court: Well, go on, if you want to verify it. The reason why I asked that, it was done in the desire to get, as fairly as I can, at this matter, without this everlasting contention, and that is this: they introduced the bookkeeper who made the books in the Badders Clothing Company and undertook to read from those statements there as to how much the indebtedness was, and all I asked about it was as to whether this account was one of them mentioned in that.

Mr. Harkless: What Your Honor asked was, if it was one of the ones the bookkeeper testified to as being due. That is what I am objecting to; there is no testimony they were due; you used the expression "due," and that is what I except to.

The Court: Well, whether due or not due, it was what was owed. We will not play upon words here; what I am trying to find out, with a view to shortening this is, as to the proof of the bookkeeper as to the indebtedness of the Badders Clothing Company at a certain time.

Mr. Harkless: We agree on that except as to the word "due."

The Court: I will withdraw that if it will suit you; not split hairs upon a matter of this sort; matters of more importance to be decided upon in a trial of this kind.

Mr. Harkless: I except to the court's words here that we are splitting hairs about things.

The Court: Go on with your question.

Mr. Harkless: Can't allow that to go without excepting to it.

Mr. Hite: Your Honor, it would be an accommodation if we might be permitted to take this matter up with this witness in the morning. I see the hour has arrived when your Honor usually adjourns for the evening, and specially in view of our wish to examine this letter.

The Court: I think the request is reasonable and I will grant it.

The Court: Gentlemen, it is about time for our evening adjournment and you may adjourn the court until tomorrow morning at half past nine.

716 (9:30 A. M. WEDNESDAY MORNING, January 27, 1915.)

I. W. LEVY (on the stand).

Questions by Mr. Robertson:

Mr. Robertson: Exhibits numbers 72 and 89 are offered in evidence.

Mr. Hite: Exhibit No. 72, the defendant objects to for the reason that it has not been sufficiently identified as having been signed by the defendant; and for the further reason that it is not sustained, the offer is not sustained by any evidence that the defendant mailed or caused to be mailed; for the further reason that the offer is not sustained by any sufficient evidence that it was mailed for the purpose of executing any scheme or artifice as alleged in the indictment; and for the further reason that the paper offered by the government shows upon its face that it was not addressed to the people with reference to whom the witness is testifying, and that it is not shown that the defendant had anything whatever to do with the mailing of it, or knew that it had been mailed to the people that claim now to have received it. I make the further objection that as to the part of the contents of the paper offered in evidence, there is no proof whatever, direct or indirect, tending to show that it was the act of the defendant, and that the sole indication of any signature or act on the part of the defendant are certain initials to what appears to be an addition to the paper, and those initials have not been sufficiently identified as having been placed there by the defendant; for the further reason that there is no testimony sufficiently establishing that the defendant had any intention whatever that this letter should be transmitted to the person now on the witness stand or any person whom he represents.

The Court: Give me the indictment.

Mr. Hite: That objection, Your Honor, goes to Exhibit No. 72.

The Court: That has reference to what count.

Both Counsel: Second count.

717 The Court: Do you desire to say anything in reply to this objection?

Mr. Robertson: I think there is no merit in a single one of them.

The Court: Have you anything to say as to the merit of either of them?

Mr. Robertson: The charge in the indictment, in substance, Your

Honor, is that defendant made use of the corporation as a vehicle, to the end charged in the indictment.

The Court: And this letter is set out in the indictment?

Mr. Robertson: Copy in the indictment.

The Court: This witness has testified that he received it.

Mr. Robertson: The witness has testified that he received the letter through the United States mail, personally, at his place of business in New York City.

The Court: Objections are overruled.

Mr. Hite: Note an exception.

Mr. Hite: Your Honor has examined the paper I assume?

The Court: I looked at the paper; I have looked at it before this time.

Mr. Hite: I mean the paper offered in evidence.

The Court: Yes.

Mr. Hite: Now I understand the government has offered the envelope at the same time. That is Exhibit No. 89. To that exhibit the defendant offers the objections heretofore interposed as to Exhibit No. 72, and the further objection that there is no evidence tending to show that the Exhibit No. 72 was placed in that envelope by the defendant or at his suggestion, or by any one in his employ.

The Court: That objection is overruled.

Mr. Hite: Except.

The Court: What is the number of the exhibit you propose to read now?

Mr. Robertson: Exhibit No. 72, the count letter, second count letter: Reading Exhibit No. 72. Reading Exhibit No. 89, the envelope.

(Copies of Exhibits numbers 72 and 89 are attached hereto and made a part hereof.)

718 Cross-examination.

#### Questions by Mr. Hite:

Q. Mr. Levy is your name?

A. Yes sir.

Q. What are your initials?

A. I. W.

Q. And you are in the service of Cohen & Lang?

A. Yes sir.

Q. A New York corporation?

A. Yes sir.

Q. Are you an officer of that corporation?

A. I am acting secretary of that corporation.

Q. And a stockholder?

A. No sir.

Q. How long have you been in the service?

A. Nine years.

Q. What is the nature of your duties?

A. Office manager.

Q. And what do you do with reference to that?

A. Supervising the bookkeepers.

Q. Supervising the bookkeepers?

A. And correspondence.

Q. And correspondence.

A. And passing upon credits, and the general requirements in an office of an establishment of that kind.

Q. How much of an establishment is that Mr. Levy?

A. An establishment that does about two million dollars business a year.

Q. What is its capital?

A. Three hundred thousand dollars.

Q. How many clerks are there in that office where you do your work?

A. Including the stenographers do you wish to know, Mr. Hite?

Q. We will omit those; you may omit the stenographers, and say the general clerks; just about, Mr. Levy?

A. Three.

Q. Three?

719 A. Yes sir.

Q. And what are the natures of their respective employment?

A. Clerical.

Q. A bookkeeper, I suppose?

A. Yes sir.

Q. A cashier?

A. No.

Q. What is the other one?

A. Assistant bookkeeper and charge clerk.

Q. A charge clerk; and how do you keep your correspondence, in files?

A. Yes, in cabinets.

Q. In cabinets?

A. Yes.

Q. Are the letters folded up when they are received?

A. No.

Q. They are put in flat, are they Mr. Levy?

A. Yes sir.

Q. Who opens the mail?

A. I do.

Q. What do you do with the envelopes that letters come in?

A. Ordinary letters, the envelopes we simply throw them in the waste basket.

Q. That is your usual practice?

A. Usual practice.

Q. About how many letters do you say your concern has received from the Badders Clothing Company?

A. I couldn't say.

Q. A good many?

A. I couldn't say.

Q. Well, as many as ten?

A. I couldn't say.

Q. Well is this the only letter your concern ever received?

A. No.

Q. Then you have received more than one?

A. I believe so.

A. You can't give the jury any idea of how many you ever received?

720 A. No.

Q. You may have received as many as fifty?

A. I can't say.

Q. That however would not be impossible, would it? For your firm to have received fifty?

Mr. Robertson: Objected to as entirely immaterial and not proper cross examination.

The Court: Answer: Do you know how many letters, or can you estimate the number of letters your house received from this defendant? Within what time do you give?

Mr. Hite: Within the time you have done business with them.

A. No I can't say.

Q. You can't say whether few or many, can you?

A. No sir.

Q. Have you any other envelopes than the one you produced here?

A. It is the only one I have of the Badders case.

Q. How did you happen to preserve that?

A. Simple enough; the system employed in our office is we withhold all envelopes appertaining to financial statements submitted by our customers, and my own experience leads me to hold envelopes when an account is doubtful, well, when an account is doubtful.

Q. Why do you do that?

A. For the purpose of reference.

Q. Is it for the purpose of turning them over to the postoffice establishment?

A. No.

Q. What is the purpose then?

A. The purpose is, for our own records and our own files.

Q. And this is the only one you preserved from the Badders Company?

A. Yes.

Q. Then, as I understand it Mr. Levy, you considered this account doubtful at that time?

A. At that time it was doubtful, yes.

721 Q. And you so considered it?

A. Yes.

Q. And this letter you treated as a financial statement did you?

A. No.

Q. But it was because it was a doubtful account, is that it?

A. Yes.

Q. What led you to believe the account was doubtful?

A. On November 21st we recalled the shipment—

A. I didn't ask you that?

A. Well I have to lead up to it Mr. Hite if that is the way you want me to answer.

Q. If that is leading to it, I beg your pardon.

A. Shall I continue?

A. Surely.

A. On November 21st when we recalled that shipment it was because we had had contrary reports in the city of New York concerning Mr. Badders, and when I received that letter on or about December first, 1913, in which Mr. Badders requested us to ship the merchandise, it was a question whether I was going to ship it back to him or not and I therefore held the envelope for that purpose.

Q. Please examine this letter and see whether you desire to correct your statement as to when you got that letter, and that Mr. Badders in that letter requested you to reship the merchandise, handing the witness Exhibit No. 72?

A. Will you please repeat that question Miss Stenographer?

Question read.

A. No, nothing that I can correct.

Q. Is there anything in that letter Mr. Levy requesting Cohen & Lang to reship any merchandise?

Mr. Robertson: Objected to as not the best evidence and not proper cross examination.

The Court: You will not ask him what is in the letter. The letter has been read and he has made a statement.

Mr. Hite: If Your Honor please, we think we have a right 722 but Your Honor has ruled upon it I take it?

The Court: Yes.

Mr. Hite: Except.

Q. Mr. Levy that letter is not addressed to Cohen & Lang is it? Please answer the question.

Mr. Robertson: Objected to as not the best evidence.

The Court: The letter shows to whom it is addressed. Overruled.

Mr. Hite: Except.

Q. Mr. Levy how do you get the impression from that letter addressed to Spero, Michael & Son that it was a request of Cohen & Lang to reship the goods?

Mr. Robertson: Objected to as not the best evidence, it shows for itself.

The Court: The objection is sustained.

Mr. Hite: Except.

Q. You have testified, as I understand your testimony, Mr. Levy, that you preserved this envelope, Exhibit No. 89, because this was a matter relating to a doubtful account?

A. Yes.

Q. This letter that you refer to is Exhibit No. 72 addressed to Spero, Michael & Son, is it not?

A. The letter says so, yes sir.

Q. Is there anything in or about that letter, or any circumstances

connected with it, that it was intended for any other purpose than to give you information by the defendant of what had been written to Spero, Michael & Son?

Mr. Robertson: Object to that as argumentative; not the best evidence; not cross examination.

The Court: I think so; objection sustained.

Mr. Hite: Except.

Q. Is there any circumstances that you know of in any dealings of your house with the defendant that indicates in connection with this letter it was a request to reship the goods?

(Witness requests the question to be read.)

Question read.

723 Mr. Robertson: Objected to as calling for the conclusion of the witness.

The Court: Answer.

A. I will have to lead to it in this way; it caused Mr. Badders to write this letter to us; we notified him that we would not ship his goods; I have got to lead to it.

Mr. Hite: We object to your stating as to what you notified him if it was in writing.

The Court: If it was in writing how can he tell it, unless he states it, unless you have the paper.

Mr. Hite: Because he is undertaking to tell something that was in some paper, and it is not the best evidence.

The Court: You have asked him if there was anything else in any other paper that he could take this as a request to reship.

Mr. Hite: I asked him, Your Honor, if there were any circumstances.

The Court: Well, were there any circumstances? Answer that?

A. Yes.

Mr. Hite: Any dealings that you personally had with Mr. Badders?

A. Personally, when you say personally you mean Cohen & Lang?

A. I mean you individually?

A. No, I had no individual dealings with Mr. Badders.

Q. Then when you say there are circumstances which lead to the conclusion that this letter was written for the purpose of getting you or your firm to reship the goods you were speaking of matters of which you have no personal knowledge? Isn't that true?

A. Why no.

Q. You have never had any conversations with Mr. Badders at all?

A. No.

Q. You had never seen him up to the time he came to New York in November, had you?

A. That is right.

724 Q. Did you see him then?

A. Yes.

Q. Were you introduced to him?

A. No.



Q. The only time, as I understand your testimony, that you ever heard Mr. Badders speak, or any person speak whom you thought was Mr. Badders was when you overheard the testimony in Mr. Lang's office, is that true?

A. You put that question in two forms; if you will separate it I can answer it better.

Q. See if you cannot answer the question as asked?

A. No I can't answer the question Mr. Hite the way you put it. Because you put it in such a manner it is impossible for me to answer; you might ask me how I knew it was Mr. Badders; I could answer it.

Q. I am not asking that; I am asking the extent of your knowledge of Mr. Badders.

A. I can't answer that.

Q. Did you ever hear Mr. Badders talk at any time except the time that you have related in Mr. Lang's office?

A. No.

Q. How long did that conversation last?

A. About twenty minutes to the best of my recollection.

Q. Have you told the jury all you remember of what you heard?

A. Unless my memory can be refreshed.

Q. So far as you now remember you have told them all about it?

A. So I testified last night.

Q. How do you know that wasn't Mr. Boyd talking to Mr. Lang?

A. I found out who Mr. Badders was first.

Q. What do you mean by that Mr. Levy?

A. That is it; you have got me to answer the question right. When I saw the two gentlemen in the office of Mr. Lang I immediately went to Mr. Goldstein, the salesman who waited upon them, and I says, "Who are those two gentlemen?" He said "That gentlemen there is Mr. Badders and the other is Mr. Boyd." I knew Mr. Badders and I knew Mr. Boyd.

725 Q. Had you heard either of them speak before that time?

A. No.

Q. Then how did you know this was Mr. Badders talking to Mr. Lang?

A. He was pointed out to me and I saw him.

The Court: Is the defendant here the man you heard talk there at that time?

A. Yes sir.

Mr. Hite: I understand the witness has not testified that he talked to Mr. Badders?

The Court: He testified he saw Mr. Badders in Mr. Lang's office; and I ask him now whether the defendant here is the man you have reference to and saw there?

A. Yes sir.

Mr. Hite:

Q. Did you see Mr. Badders talking to Mr. Lang?

A. Yes sir.

Q. You saw him, and you know this is the gentleman that had this conversation with Mr. Lang?

A. Yes.

Mr. Robertson: Now Your Honor I have been counting this; I think that is either six or seven times counsel has asked this witness if he saw Mr. Badders talking to Mr. Lang and saw Mr. Boyd there, and I object to it as useless repetition.

Mr. Hite: Just repeat what you heard?

A. If the stenographer will refer to my testimony it would be the same thing.

The Court: You will repeat it again if he asks for it; state what was said there?

A. Mr. Lang asked Mr. Badders, in substance, what did he require this merchandise for. And Mr. Badders told him that he had made his purchases early in the season, and finding the prospects of the season as not going to be favorable, he cancelled the orders that he had given at the opening of the season, and as it was his intention to make a sale, and not knowing or fearing that he would not be able to obtain the necessary merchandise purchased from the former creditors, which merchandise he had cancelled, they came on east to buy the necessary merchandise required for this sale.

726 And Mr. Lang then said to him, "Do you know that we sell these goods on a nine off ten day basis?"

Q. Pardon me Mr. Levy; Will you please explain to the jury what you mean by nine off ten day basis?

A. In the mercantile business we have what you call discounts; if a man buys a suit of clothes for ten dollars, it is subject to two classes of payments; if he pays that bill in ten days he is entitled to nine per cent, which means at the end of ten days he could pay that bill with \$9.10; nine per cent off ten dollars is ninety cents; deduct that ninety cents from ten dollars, would be \$9.10. We have another term which are called seven off ten or sixty days extra, which means that if the customer is not in position to anticipate or pay that bill within ten days, so that he can take his nine per cent off, he then has the privilege of holding the bill for seventy days, seven, ten or sixty extra, since at the end of seventy days he can take off seven per cent, and then pay us seven off ten is seventy cents or \$9.30. Those are options which we give to our customers.

Q. Now continue please?

A. And Mr. Badders consented to the terms of nine off ten days.

Q. What more was said?

A. That is all that I can recall just now Mr. Hite unless my memory be refreshed.

Q. That is your present best recollection of all that was said there?

A. Yes.

Q. And you are now endeavoring to give the jury the substance of that conversation?

A. Yes.

Q. You are not withholding anything that you now remember.

A. No.

Q. Mr. Levy, there can't be any doubt, can there, about the terms of that sale?

727 Mr. Robertson: Objected to as argumentative, immaterial, not cross examination, and a prerogative of the jury to determine.

The Court: You may ask him what the terms of the sale was.

Mr. Hite: I understand he has already said.

The Court: Then if he has stated the terms it is not necessary to ask the question further in reference to the matter.

Mr. Hite: The purpose of the question is, the witness saying his memory might be refreshed as to something else.

The Court: He says, was there any other statement made there other than you have stated now?

A. Not at that time.

Mr. Hite:

Q. Was there any subsequent statement in reference to the terms of the sale, modifying this conversation?

A. Not orally.

Q. Not orally?

A. No sir.

Q. Then there was some written modification of those terms was there?

A. Yes.

Q. And the agreement with reference to this purchase was subsequently reduced to writing? Is that true?

A. Yes.

Mr. Hite: If Your Honor please, we ask that the testimony of the witness concerning the arrangement for the purchase of these goods which he overheard be stricken out as incompetent and not the best evidence.

The Court: The objection is overruled.

Mr. Hite: Except.

Q. Where is the paper containing the agreement with reference to the terms of the sale?

Mr. Robertson: Object to that question just for this reason, Your Honor, it assumes there was an agreement of some sort.

The Court: Did you have correspondence?

A. There was such a letter here Your Honor.

Mr. Hite: A letter concerning this purchase?

728 A. I don't know if I could answer it when you say this purchase.

Q. I mean the purchase that was the subject of the discussion you overheard?

A. Yes.

Q. Have you the letter or a copy of it?

A. I think the original letter is in court in the hands of Mr. Robertson.

Mr. Robertson: You have it Mr. Hite and I have your receipt for it.

Mr. Hite: That among the bunch of papers you produced?

Mr. Robertson: Yes sir.

Mr. Hite:

Q. When did you see that paper?

A. I saw that paper this morning.

Q. Had you seen it before?

A. Yes sir.

Q. When?

A. The day it was written.

Q. Who wrote it?

A. Mr. Lang dictated it.

Q. And showed it to you?

A. Yes, I read all the mail before it goes out at night.

Q. And you recall reading this letter?

A. Yes.

Q. Was the paper exhibited to you last night by Mr. Robertson or this morning?

A. It was not exhibited to me last night; I asked for it this morning.

Q. Had you heard anything about it in the court room yesterday?

A. No.

Q. Please examine the paper I now hand you marked Exhibit No. 90 and state if that is a letter that came from Cohen & Lang?

A. I would like to see the one before this.

Q. Please answer the question with reference to this letter first and then we will get to the other if it is necessary; what I asked you Mr. Levy was whether that was a letter from Cohen & 729 Lang to the Badders Clothing Company?

A. This is a letter to the Badders Clothing Company from Cohen & Lang, yes sir.

Q. Is this the letter that was shown to you this morning by the United States Attorney?

Mr. Robertson: Objected to as assuming a state of facts Mr. Hite knows is not in evidence; the witness testified he hunted the letter up himself.

Mr. Hite: I understand the witness to say he saw the letter this morning.

The Court: Did you see this letter this morning.

A. I saw this letter this morning.

Mr. Hite:

Q. Where did you see it?

A. The office of the District Attorney.

Mr. Hite: We offer the paper in evidence, Exhibit No. 90.

Mr. Robertson: Go ahead and read it.

Mr. Hite: Reading Exhibit No. 90.

(A copy of Exhibit No. 90 is attached hereto and made a part hereof.)

Q. Now Mr. Levey please state to the jury what this seven, ten-sixty *x* means?

A. I have explained that to them a few minutes ago.

Q. Explain it with reference to this matter?

A. That he could have two terms, whether he cares to pay his bill in ten days or in seventy days from December 5th.

Q. Then as I understand you payment was not due on this bill at the option of the Badders Company until about February 15, 1914, is that right?

A. I will tell you; December 5th, have ten days, make that December 25th, and then January, February 25th about.

Q. February 25th?

A. No, February 15th.

Q. At which time the Badders Company could have paid this bill less a seven per cent discount from the face of it, is that correct?

A. Yes.

730 Q. At the time that letter was mailed from Cohen & Lang was this account with the Badders Company considered by you as a doubtful account?

A. Not then.

Q. In the meanwhile had you communicated, or your office communicated with the Stein-Bloch Company?

A. I can't recall.

Q. Do you mean by that you don't remember having done so?

A. Yes.

Q. Had you at any time referred to the Stein-Bloch Company as to the financial condition of the Badders Company?

A. I don't think I did.

Q. Well why were you doubtful about the matter?

A. Because we have enough New York creditors——

Q. Sir?

A. We had enough New York creditors without referring to the Stein-Bloch Company.

Q. Did you refer to any one else?

A. All New York creditors.

Q. Did any of these people to whom you referred that to say that the Stein-Bloch people said that account was all right?

A. Not to my knowledge.

Q. Did you talk with Mr. Kamber about the matter?

A. I did not.

Q. Robert Kamber or Mr. H. Kamber, there is such a firm?

A. I did not.

Q. Did anybody from your office talk with them?

A. To Lipps Bros.

Q. And to no one else?

A. Yes.

Q. Who else?

A. Jacob Cohen Sons & Co., and J. Samuels & Sons, Spero, Michael & Son, unless Mr. Lang had spoken to Robert Kamber or

H. Kamber & Company or the Nipson System, and several others I can't just now recall.

Q. Calling your attention to this phrase in this letter  
731 Exhibit No. 72, "Will you not talk with Robert Kamber & Hoffman, J. Samuels & Bros. and call Stein-Bloch at Rochester on long distance if in any doubt as to our responsibility." I will ask you Mr. Levy if you accepted that invitation as being addressed to your firm?

A. Yes sir.

Q. And you now say you do not recall that you called Stein-Bloch & Company long distance?

A. No we didn't call Stein-Bloch & Company on long distance.

Q. Or make any other inquiry that you now remember of the Stein-Bloch Company, is that right?

A. Yes sir.

Q. Mr. Levy are you a member of the National Credit men's Association?

A. Not the Credit Men's Association, we are members of the National Clothiers' Association.

Q. Do you recall the circumstance of a petition in bankruptcy being filed against the Badders Clothing Company?

A. I have some recollection.

Q. Do you know about when that was?

A. About in March 1914.

Q. March?

A. I think so, or earlier, somewhere around that time.

Q. To refresh your recollection Mr. Levy I will ask you if it wasn't filed About January 1914?

A. Let me say that then, the early part of 1914, to be nearer right.

Q. You do know it was filed before your bill became due, do you not?

A. Yes.

Q. And you know of the fact at the time this bankruptcy proceeding was filed an injunction was also issued, do you not?

A. I do not know.

Q. Didn't you hear anything of that?

732 A. Injunction for what purpose?

Q. To prevent any of the officers of the Badders Clothing Company disbursing any of its funds?

A. I can't recall such a thing, it may be so but I cannot recall it.

Q. Did Cohen and Lang have a representative in Topeka looking to the collecting of this account in January 1914?

A. No.

Q. What if any efforts did you make to collect your account in December or January 1914?

A. There was no chance; he had gone into bankruptcy, to collect our bills when due, Mr. Badders had been already in bankruptcy.

Q. So that no effort was made by your firm in that connection prior to the bankruptcy proceedings?

A. Prior to the bankruptcy proceedings, in the general course of

matters of that kind, our association took the matter up and we gave them our statement and our claim was filed, accordingly.

Q. Did Cohen and Lang contribute anything towards the fund for the purpose of the prosecution of any of the officers of the Badders Clothing Company?

A. No. We made a contribution but not for the prosecution of any officer.

Q. You did make a contribution?

A. Yes.

Q. Of how much?

A. Five per cent.

Q. Of what?

A. Of what he owed us, eight hundred and sixty two dollars and a half.

Q. To whom was that contribution made?

A. At the request of our Mr. Rosenberg of the Adjustment Bureau of the Clothing Association of New York.

Q. To whom was it paid?

A. I think made payable to his order.

733 Q. About when was it paid?

Mr. Robertson: Your Honor, I have not been objecting to this just because—but I object now as not proper cross examination and quite immaterial.

The Court: Go on and ask him.

Mr. Hite:

Q. About when was it paid?

A. On or about March 10th I think of 1914, if my recollection is clear.

Q. Will you be kind enough to give me the initials of Mr. Rosenberg?

A. H.

Q. What is his first name?

A. Henry I think; he is the manager of our adjustment bureau.

Q. Have you got the check or any letter with reference to it, of the amount of the contribution that was made by Cohen & Lang that you speak of?

A. No, I have not.

Q. Are you reasonably certain that it was about March 10th?

A. Reasonably certain, yes. If you put the question that way, yes.

Redirect examination.

Questions by Mr. Robertson:

Q. Now I hand you paper marked Exhibit No. 91 and ask you if that is also a portion of the correspondence or transaction between you and Mr. Badders referred to by the counsel in his cross examination?

A. Yes.

Mr. Hite: We object to the question and the answer of the wit-

ness as incompetent, irrelevant and immaterial, not proper re-direct examination; wasn't anything said about any other paper Your Honor.

The Court: Well, even if there wasn't you asked him if there was any further correspondence or anything of that sort. Now as I understand this is in reference to matters brought out. Answer.

734 Mr. Hite: Except.

A. Yes.

Q. State how that was received by you, if it was received by your house?

A. By telegram.

The Court: Is that the telegram that was referred to in the letter?

A. In this letter the District Attorney now holds in *in* his hand Your Honor.

The Court: That is the answer to the night message or night letter.

Mr. Hite: This is a carbon copy, as I remember it; it is not a telegram at all.

Mr. Robertson: I expect that is correct.

The Court: Well if it is not correct it is not.

Mr. Robertson: Have you any personal knowledge by which you are enabled to say whether that is a telegram or not that you received?

A. These are the exact words on a telegram which we received from Mr. Badders.

The Court: There is the telegram?

A. I have not got the telegram.

Mr. Robertson: Do you know what was done with it?

A. I will see whether I may have it; I don't think so. (Witness looking through his papers.) I think that telegram together with all other papers relating to the Badders case was sent to Mr. Rosenberg our manager, he required them.

Mr. Robertson: All right.

The Court: Then you need not answer this question.

Mr. Robertson: I hand you paper marked Exhibit No. 92?

A. Yes.

Q. State, if you know, whether you know that was sent to Mr. Badders?

A. Yes.

735 Mr. Hite: Your Honor, this we object to as incompetent, irrelevant and immaterial; the witness cannot possibly know that if he never knew anything about Mr. Badders; might say that it was put into the mails, and that was about all he would know about it.

Mr. Robertson: Bears the name.

The Court: Very well, answer.

Mr. Hite: Except.



A. This letter was sent in answer to Exhibit No. 72.

Mr. Hite: We object to the witness testifying as to what the letter is.

The Court: He says it was in answer to the exhibit that has been called to his attention. You may answer.

Mr. Hite: Except.

Mr. Robertson:

Q. Was it sent to Mr. Badders?

A. Yes sir.

Q. In what way?

A. By United States mail.

Q. By United States mail?

A. Yes.

Q. Did you see it yourself before it was sent?

A. Yes.

Mr. Robertson: Offer Exhibit No. 92 in evidence.

Mr. Hite: Objected to as incompetent, irrelevant and immaterial, not any declaration made by the defendant; if anything a mere statement made by some one else, and therefore it is incompetent; cannot possibly bind the defendant as to what Cohen and Lang might have said to him.

The Court: You may read it.

Mr. Hite: Except.

Mr. Robertson: Reading Exhibit No. 92.

(A copy of Exhibit No. 92 is attached hereto and made a part hereof.)

The Court: Do you offer the wire, if there was one.

Mr. Robertson: The trouble is, he objects because it is a mere copy of the wire and therefore incompetent and we cannot produce the original.

736 The Court: I don't ask you to state what the contents of anything was in answer to that letter; did you receive a wire?

A. Yes sir.

Mr. Hite: We ask an exception to the question propounded by the court for the reasons heretofore stated.

(Witness excused.)

737 PHILIP LIPPS, called as a witness on behalf of the plaintiff, having been first duly sworn, testifies, as follows:

Direct examination.

Questions by Mr. Robertson:

Q. What is your name?

A. Philip Lipps.

Q. Where do you live Mr. Lipps?

A. New York City.

Q. What is your business?

A. Clothing manufacturers.

Q. Is your business conducted by a partnership or corporation?

A. Partnership.

Q. Are you a member of the partnership?

A. Yes sir.

Q. Who are the other members?

A. Philip Lipps, Charles Leon Lipps, and Bernard H. Lipps.

Q. Under what firm name and style, if any, do you do business and were you doing business during the entire year of 1913?

A. Lipps Brothers.

Q. And during the entire year of 1913 where was your place of business?

A. 622-24 Broadway New York City.

Q. In the state of New York?

A. Yes sir.

Mr. Robertson: Your Honor, this testimony is upon count 3.

Q. I hand you paper that has heretofore been referred to and is marked Exhibit No. 73, and ask you if you have seen that before?

A. Yes sir, I got this through the mail by my own hand.

Q. Through the United States mail.

A. Through the United States mail, yes sir.

Q. Whereabouts?

A. From Topeka, Kansas.

Q. Where did you receive it?

A. I did, in New York City, in my place of business.

Q. About when did you receive it if you can state?

A. What date?

Q. Yes sir?

A. I don't remember the date, but I know it was between twelve and one noon; I don't remember the date exactly.

Q. Can you state about when?

A. I think it was in the month of November or December, I don't—

The Court: What is the date of the letter?

A. December first.

Mr. Robertson:

Q. When in relation to the date did you receive it?

A. About the third or fourth day of December, 1913.

Q. What year?

A. 1913.

Mr. Robertson: *O Officer* Exhibit No. 73 in evidence.

Mr. Hite: To which the defendant interposes the objection heretofore interposed to Exhibit No. 72, with the additional objection that there appears upon the face of the exhibit an erasurer which is not mentioned in the indictment, or in the third count of the indictment, and that such erasure is not accounted for in the indictment nor referred to, and that the exhibit as offered is a reparture from the allegations of the indictment; and for the further reason

that in the count of the indictment referred to, towit, the third count, it is alleged that there was mailed with this a certain envelope; the absence of the envelope is not accounted for in the indictment and we object to the introduction of this exhibit specifically on the ground and in addition to the other grounds, for the reason that it is not accompanied by the envelope nor is there in the indictment any explanation of why the envelope is not counted upon or produced.

The Court: Let me see the erasure.

Mr. Robertson: I want to say something further then I will hand it to Your Honor, if you will pardon me.

Q. Mr. Lipps, have you the envelope in which this letter came to you?

739 A. No sir I have not, we threw it away.

Q. What was done with it?

A. I just threw it in the trash basket.

Q. You threw it in the trash basket?

A. Yes.

Mr. Robertson: Now, I ask counsel for the defendant to indicate to the court wherein there is any departure in this letter from the allegations of the indictment, and also wherein there is any erasure whatsoever.

Mr. Hite: To which counsel for the defendant replies that it appears that a date or date line, or some words above the word "December" have been erased or stricken out, and in the respects indicated it is not the letter, or departs from the letter, a copy of which appears on the face of the indictment.

The Court: I do not think it is material. I do not think the change—I suppose you have reference to the word that seems to be erased or blotted out there above the word "December"?

Mr. Hite: Yes, and it is, as we contend, in a material respect, towit, the month appears to have been erased as originally written, and the change is not accounted for.

Mr. Robertson: I may say, to Your Honor, that the government does not offer in connection with this Exhibit No. 73 any lead pencil notations that may appear upon the letter outside of those made by your reporter.

The Court: You may read the paper.

Mr. Hite: Defendant excepts.

Mr. Robertson: Reading Exhibit No. 73. (A copy of Exhibit No. 73 is attached hereto and made a part hereof.)

Q. Mr. Lipps?

A. Yes sir.

Q. Have you ever met the defendant Mr. Badders?

A. Yes sir.

Q. When and where?

A. In my place of business.

Q. When?

A. November month.

740 Q. What year?

A. 1913.

Q. Did you have a conversation with him?

A. Well he come up to my store and asked me to show him my line of merchandise, and I did, and I sold them nineteen hundred dollars' worth of merchandise, and he told me to ship it at once, and I did; and the next day I recalled the merchandise because I heard he bought too much merchandise around the market and I got scared.

Q. When counsel desire to object you will cease talking.

Mr. Hite: I don't know that I made any motion.

Mr. Robertson: Somebody said "hold on."

A. And I recalled the merchandise the next day; this was on Wednesday, I presume, and on Friday or Saturday morning Mr. Badders and Mr. Boyd called at my store with a man by the name of Robert Kamber, he is not here; he asked me whether I was going to ship the merchandise to the Badders Company.

Q. Just a moment; Did you know Robert Kamber was sick and could not be here?

Mr. Hite: Object to that.

The Court: Don't make any difference whether he is sick or what.

Mr. Robertson:

Q. What I want to find out is, did you talk with this defendant there in your store?

A. Yes.

Q. Don't state what any one stated when he was not present, but what was stated when he was present.

A. Mr. Robert Kamber asked me whether I am going to ship the merchandise—

Mr. Hite: We ask that the witness—

Mr. Robertson: Was Mr. Badders with him?

A. He was in the next room; afterwards he called me in.

The Court: This was not in his presence?

A. No sir, he was not present.

Mr. Robertson: Mr. Lipps, just take the matter slowly; no need of being in any hurry.

A. All right.

741 Q. Now just state the things that were said when Mr. Badders was present is all?

A. I called Mr. Badders into my office, he was in my office, I says to him, "Now why did you buy so much merchandise?" I asked Mr. Badders in the presence of Mr. Boyd, "Why did you buy so much merchandise?" He told me that he had cancelled his entire purchases the early part of the season, and he wanted to make a sale and therefore he wanted to buy some merchandise of me, but he was going to cancel all he bought, with very few exceptions, and he wanted to buy my merchandise, and a few more. "Well," I says to him, "It looks very suspicious to me." I says, "It don't look good to me." He says, "I will tell you what I will do with you; I am going to give you some money on account." And he pulled out

of his pocket a five hundred dollars bill and he gave it to me, and he says, "Ship the merchandise at once, I need it and get the merchandise into my store; I am going to pay you for it, you need not worry about that." And he gave me a five hundred dollar bill out of his own pocket. And I called up the railroad company to ship the merchandise to the Badders Company.

Mr. Hite: Your Honor, there is a long distance telephone call for the defendant, and may he answer it?

The Court: Certainly.

Mr. Robertson:

Q. Mr. Lipps, what further, if anything, do you recall?

A. Well, he gave me five hundred dollars in cash, currency. He also gave me a personal guarantee, if the company will not pay me he personally himself will pay me this money. And then we waited for our money and never got it, and we wrote them several letters and he telegraphed us that he was sick in bed.

The Court: If you have any letters, those are the things to offer, or telegrams.

The Court: You got five hundred dollars in cash and he gave you his personal guarantee; that in writing?

742 A. Yes sir, in writing.

Q. Have you got it?

A. Yes.

The Court: Let's have that.

Mr. Robertson:

Q. I hand you a paper marked Exhibit No. 93 and ask you if that is the guarantee he referred to?

A. Yes sir, that is the guarantee.

Q. Did you see Mr. Badders sign it?

A. Yes, sir, in the office in the presence of my bookkeeper.

Mr. Robertson: We offer Exhibit No. 93 in evidence.

Mr. Hite: We object to this as immaterial and not properly identified.

The Court: I don't know what you mean by "properly identified"; the witness says it was wirt-en and signed in his office and he saw the defendant sign the letter; I don't know how else it could be identified. Read it.

Mr. Hite: Except.

Mr. Robertson, reading Exhibit No. 93.

(A copy of exhibit No. 93 is attached hereto and made a part hereof.)

Q. Have you received payment of any of your account?

A. Not yet.

Q. Well, now, what further, if anything, happened between you and Mr. Badders, Mr. Lipps?

A. Well I can say that we asked them for some money and they telegraphed to us—

The Court: I have told you time and again not to tell what was

in telegrams; if you have got a telegram that you want to show him, ask him if he got that?

A. I presume it is here.

The Court: Well, we will get along here; wait a while until the question is asked you.

Mr. Robertson: The papers are not here, Your Honor, I think we will have to suspend right here. No, just a minute.

Q. What if anything was said to you about the capital stock  
743 of the Badders Company?

A. Oh yes, yes, you recall me just now; we were talking about how good this concern is financially, telling me I should not need to worry about it; telling me going to increase their capital twenty five thousand dollars more, and then they come to the guarantee and he says, "I will give you a personal guarantee, if you want." That is all I can remember just now.

Cross-examination.

Questions by Mr. Hite:

Q. What is the nature of the business that Lipps Brothers is engaged in?

A. Manufacturers of clothing.

Q. What kind of clothing was the defendant buying?

A. Men's clothing.

Q. What season's clothing, winter or—

A. Winter, yes, winter yes.

Q. And he was there late in November?

A. In November yes sir.

Q. Is that the usual season for buying winter clothing?

A. Only for sales.

Q. Only for sales?

A. We sell winter clothing the whole year around, it is immaterial.

Q. But in the winter time purchases of winter clothing are made for sales, special sales?

A. No, they weren't made for sales; we sell them, that is all I know about it; we sell clothing the whole year around every day in the week.

Q. Winter clothing?

A. Winter and summer, all kinds of stuff we sell.

Q. Sell winter clothing in summer?

A. We sell clothing the whole year around.

Q. Ever sell winter clothing in summer?

A. Yes sir.

Q. Ever sell winter clothing in the winter?

A. Yes sir.

744 Q. Do you do a retail business?

A. No sir we do not.

Q. Just manufacture?

A. Just manufacture.

Q. Do you know what the usual custom is as to buying winter clothing by retailers?

The Court: I don't think it is material to waste time upon that; this man bought it, as he says, whether in November, November or December——

A. November.

The Court: Don't make any difference what the custom was, if he bought this particular clothing at that time.

Mr. Hite: Except.

Q. Did you call up the Stein-Bloch's at Rochester to inquire about the Badders Clothing Company?

A. Call up?

Q. Telephone?

A. Telephone, no sir.

Q. Who did you make inquiry of?

A. We made an inquiry from Stein-Bloch Company.

Q. At their New York Office?

A. Direct.

Q. Direct?

A. Yes.

Q. To Rochester?

A. To Rochester. Yes sir.

Q. By letter?

A. By letter.

Q. Did they recommend the Clothing Company?

A. Recommend what?

Q. Did they recommend the Clothing Company?

A. They simply told me that they had sold them for so many years, I don't remember exactly how long it was, and simply told me all about that, that is all.

Q. What did they tell you about it?

A. That they sell them so much merchandise, and that was all.

745 Q. Did they say they was all right?

A. I don't recollect that, what they say, don't remember that.

Q. Did they make a satisfactory answer to your letter?

A. They didn't reply within ten days; the merchandise had been shipped already before I got their answer.

Q. Well was their reply satisfactory?

A. Well I don't remember if it was satisfactory, it wouldn't do me any good, the goods was gone the same day he bought it?

Q. What was the terms of the sale?

A. Ten days.

Q. And he was to pay for them in ten days?

A. Yes upon receipt of the goods.

Q. And he had sixty days' option did he not?

A. No sir.

Q. With a discount at the end of that time?

A. No discount whatever.

Q. No discount whatever?

A. Not this particular bill, no.

Q. Was there any discount on this bill?

A. No sir.

Q. None whatever?

A. None whatever.

Q. Were the prices cheap?

A. What do you mean by cheap?

Q. Well I mean were they under the usual prices for such articles of clothing?

A. We sold them the best thing we knew how.

Q. Sir?

A. We sold them the best things we knew how.

Q. Did you have a talk with Mr. Boyd?

A. He was present when *when* they bought the goods; he tried on the goods to see if they fitted. He was present when he bought it.

Q. Mr. Boyd hear your conversation with the defendant?

A. I guess he did, he bought the merchandise.

Q. And was he present when you had this talk with Mr. Badders?

A. Yes they were present there together.

(Witness excused.)

The Court: Did you offer this letter as to the third count?

Mr. Robertson: The third count has been offered and read, Your Honor.

The Court: As to Exhibit No. 73; that has been read?

Mr. Robertson: I don't remember the number of it.

HERMAN KROLL, called as a witness on behalf of the plaintiff, having been first duly sworn, testifies, as follows:

Direct examination.

Mr. Robertson: Count 4.

Q. What is your name?

A. Herman Kroll.

Q. Where do you live Mr. Kroll?

A. 720 Avenue P. Brooklyn, New York.

Q. Are you engaged in business in New York City?

A. I am.

Q. With whom, if any one.

A. H. Kamber & Company, but it is incorporated now, H. Kamber & Company, incorporated of recent date.

Q. It was not incorporated in December, 1913?

A. It was not.

Q. State if you know who constituted H. Kamber & Company during the months of November and December of 1913?

A. Harry Kamber—

Q. And by what name did he conduct his business, if you know?

A. H. Kamber & Co.

Q. During that period where was the place of business of H. Kamber & Company?

A. 24 University Place New York.



Q. Were you working for H. Kamber & Company at that time?

747 A. I was.

Q. Handing you a paper heretofore referred to as Exhibit No. 74, I ask you if you ever saw that before?

A. I did.

Q. Explain how you came to see it?

A. We received a letter, handed to me by our elevator man, the name of the Badders Company was printed on the upper left-hand corner of the envelope.

Mr. Hite: We object to what was printed on the envelope as hearsay.

The Court: Did you get that particular letter?

A. Yes sir.

Mr. Robertson:

Q. Was it in the envelope when it came to you?

A. Absolutely.

Q. And was that envelope sealed and closed when you received it?

A. Absolutely.

Q. And Mr. Kroll, who opened the envelope.

A. Mr. Kamber.

Q. In your presence?

A. In my presence.

Q. You saw it done?

A. Yes sir.

Q. I will ask you whether the letter was handed to you or not?

A. It was.

Q. What was done with the envelope, if you know?

A. It was destroyed.

Q. Do you have any recollection of what was on the envelope, if you do, what was?

Mr. Hite: Object to the witness stating what was on the envelope.

The Court: The point about it is, was this letter delivered to you in the usual way, through the United States mail?

A. Yes sir.

748 Mr. Hite: If Your Honor please, we object to the question pronounced by the court?

The Court:

Q. How did you receive it, and what was the manner of your receiving, and if you can tell, whether the envelope bore a post-mark or not?

A. The letter was handed to me by our elevator man; I particularly noticed that the name of the Badders Company—

The Court: Well, I am asking you as to whether there was any indication on the envelope that it had been in the mail by post mark?

A. It bore a post mark.

Mr. Hite: Object to the question of the court as calling for secondary testimony, and as incompetent, and not the best evidence.

The Court: Objection overruled.

Mr. Hite: Except.

The Court: Ask him if that is the letter he got.

Mr. Robertson:

Q. Is that the letter you received?

A. Yes, sir, precisely the letter.

Q. What has your elevator man that you speak of to do with your mail?

Mr. Hite: Objected to as not binding on this defendant, as to what the elevator man had to do with the mail.

Mr. Robertson: I want to show this custom.

The Court: Was this letter that is here shown to you now received by you in the usual course of business of your house?

A. It was.

Mr. Hite: We ask to have noted our objection to the question of the court.

The Court: I asked that question and you excepted to it once, you may except to it the second time.

Mr. Hite: Except.

Mr. Robertson: Offer Exhibit No. 74 in evidence.

Mr. Hite: Before the letter is received we would like to examine the witness with reference to its coming through the mail, Your Honor.

The Court: Yes.

#### 749 Cross-examination.

##### Questions by Mr. Hite:

Q. I understood you to say that this letter was opened by some one else?

A. By Mr. Kamber.

Q. By Mr. Kamber?

A. Right.

Q. How many persons are there in your office, Mr. Kroll?

A. Myself, there is nobody else.

Q. Just you and Mr. Kamber?

A. Mr. Kamber has an office adjoining mine.

Q. And Mr. Kamber opens the mail does he?

A. When he is in town.

Q. He was in town then?

A. He was.

Q. As I understand you, he took this letter that you speak of and walked into his office, did he?

A. He did not.

Q. He opened it in your office?

A. Exactly.

Q. Had your firm ever received any other letters from the Badders Clothing Company?

A. I don't recollect; subsequent or prior to the receipt of that one?

Q. Either way?

A. Yes, sir.

Q. How do you happen to recall the circumstances of this particular letter?

A. Do you want me to give it to you in full detail?

Q. Yes.

A. A short time prior to the receipt of that letter I received word from the Clothiers' Association, that is an organization formed for the purpose of disseminating information in regard to the various firms throughout the United States as to their financial responsibility, and I heard there was a certain concern in Topeka, Kansas,

named the Badders Clothing Company who were buying  
750 rather heavily for the amount of goods that they could sell;

I kept that under my hat, I never said anything, for future information in case I should receive an order from the Badders Company I certain- would know how to guard myself; Mr. Kamber was never aware of that information and it just happened that on December 4th we received a letter—I received a letter from our elevator man—I handed it to Mr. Kamber, he opened it in my presence and remarked——

Q. Never mind what he remarked.

The Court: Is that the letter he opened in your presence?

A. Absolutely.

Mr. Hite: And you mean by that "Yes" when you say "Absolutely" you mean "yes."

A. Yes.

Q. Did Mr. Kamber carry the letter into his office then?

A. No.

Q. Left it on your desk?

A. No.

Q. What became of it?

A. He took the letter and he was about to go and give to our shipping clerk to have him fill the order, because, as I say——

Q. Never mind about that; you have answered my question. After this letter was opened, as you have related, what became of it?

A. After the letter was opened Mr. Kamber held it and he wanted to take it in to the shipping clerk to have him fill the order in the usual manner——

Q. When did you next see the letter?

A. When did I next see the letter; if you will allow me to give all the circumstances.

Q. You can answer that question very easily.

The Court: Answer the question.

A. Yes, sir.

Mr. Hite:

Q. Now when did you see it after it had been opened by  
751 Mr. Kamber?

A. It was given to me.

Q. The same day?

A. Yes, sir.

Q. And when did you next see it?

A. It was filed away.

Q. In your office file?

A. Exactly.

Q. You filed it yourself?

A. Yes.

Q. Now when did you take it out of those files?

A. I don't believe I ever had occasion to take it out unless before  
having to send it to Mr. Robertson.

Q. How did you happen to send it to Mr. Robertson?

A. By request.

Q. From whom?

A. I don't recall.

Q. Was that request in writing?

A. I don't know whether it was by telegraph or mail, I can't just  
recall.

Q. Well, when you got that request from whomsoever it was,  
then I understand you went to the cabinet and took this letter out  
and sent it to Mr. Robertson?

A. It may have been I or the office girl or Mr. Kamber, I don't  
recall which one of the three it was.

Q. That took the letter out of the cabinet?

A. Yes, sir.

Q. You don't remember that you did it?

A. No, I don't.

Q. Did you see where the envelope went?

A. It was destroyed, thrown into the waste basket.

Q. I didn't ask you if it was thrown into the waste basket; that  
is your answer?

A. Yes, sir.

Q. In your office?

A. Yes.

Q. When Mr. Kamber opened the letter he threw the  
752 envelope into the waste basket?

A. As he always did.

Q. You are not accustomed in your place of business of keeping  
envelopes?

A. Not unless we have to keep it for some necessary purpose.

Q. And this was not one of those occasions.

A. I probably knew about it but Mr. Kamber didn't.

The Court: Well, he didn't keep it?

Mr. Hite: And that is not a custom of your house, except as you  
have stated?

A. Yes, sir.

Q. Now you speak of this Credit Men's Association, or whatever it is, is your firm a member of it?

A. Right.

The Court: You say yes?

A. Yes.

Mr. Hite:

Q. Had your firm contributed through that association, or otherwise, in reference to any litigation against Mr. Badders?

A. No, sir.

Q. Have you been asked to do so?

A. I believe we have.

Q. And you refused?

A. Well, I didn't refuse, probably Mr. Kamber did, I never had any discussion with Mr. Kamber regarding contributing anything toward the prosecution.

Q. Did you receive a circular letter or letters from any source asking for contributions that you know of?

A. Not that I know of.

Q. You ever see any such?

A. No, sir.

Q. Did you go through your files at all to get the papers connected with your dealings with the Badders Clothing Company to send to the United States Attorney, or some one else?

A. Yes, sir, I went through it.

Q. And among other files were there any circular letters asking for contributions?

753 A. No sir.

Q. And you sent nothing of that kind to the United States Attorney?

A. No of course not.

Q. Do you know when the goods referred to in this letter were shipped?

A. November 7, 1913.

Q. Do you know whether they were ever received by the defendant or the defendant's store?

The Court: Of your own knowledge?

A. Yes.

Mr. Hite:

Q. You get that information from some papers that you have?

A. No sir.

Q. You have seen them there?

A. I got that information because we received a letter subsequent to the date of this letter telling us that we should wait till a certain date for payment of that bill.

Q. But you got the information from the letter; you had no personal knowledge of their receipt there?

A. No sir.

Mr. Robertson: Your Honor, it seems to me counsel is going into a thorough cross examination; I thought it was preliminary, something about the letter.

Mr. Hite: I think that bears upon it, Your Honor, but that will be all.

Mr. Robertson: Pretty extensive.

Mr. Hite: Probably not be much other cross examination.

Mr. Robertson: We offer Exhibit No. 74.

Mr. Hite: Same objection heretofore made to Exhibit No. 73 and especially calling the court's attention to the absence of the envelope; I mean Exhibit Nos. 72 and 73, so that Your Honor will be reminded of the matter of the envelope, is all.

The Court: Overruled.

Mr. Hite: Except.

754 Mr. Robertson: Such lead pencil notations as appear are not offered, outside of the marks of the stenographer.

The Court: Well, don't read them.

Mr. Robertson, reading Exhibit No. 74.

(A copy of Exhibit No. 74 is attached hereto and made a part hereof.)

Mr. Robertson:

Q. State, if you know, what M. D., the abbreviation M. D. refers to?

A. Merchants Dispatch.

Q. What is that?

A. The name of a freight line.

Q. I want to ask you whether you remember if that envelope in question had the Topeka post mark or not, Topeka, Kansas, post mark?

A. Yes sir.

Mr. Hite: Object to that as secondary, not the best evidence.

The Court: The envelope you say was destroyed?

A. Yes sir.

The Court: Well.

Mr. Hite: Except.

Mr. Robertson:

Q. State if you know whether H. Kamber and Company is a creditor of the Badders Clothing Company?

A. Yes sir.

Q. To what amount?

A. Two hundred and ten dollars, I believe and fifty cents.

Q. State if you know whether H. Kamber shipped the Badders Clothing Company any goods as a result of the visit of Mr. Badders to your house in New York at that time?

A. No sir.

Mr. Hite: Objected to as calling for a conclusion of the witness. Let him state what was done.

The Court: Well I think he stated all that was done.

Mr. Hite: I understand he answered no.

The Court: Yes.

## Recross-examination.

## 755 Questions by Mr. Hite:

Q. Did you testify before the Grand Jury Mr. Kroll in this matter?

A. No sir.

Q. Were you subpoenaed before that body?

Mr. Robertson: Objected to as immaterial.

The Court: That you need not state.

Q. I understand you to state that after this letter that you have identified here as December 2, 1913, was received you did not ship any goods?

A. After we received it.

Q. Yes?

A. No.

Q. Please tell the jury what swatches are?

A. Little clippings just to indicate the style of the suit, the material, the cloth.

Q. The kind of material the suits are to be made of or are made of?

A. That they are made of.

Q. That is, that you have already made up and are for sale?

A. Well, no. We send a man swatches, we have the cloth in the house, if he wants to order some of those styles, we may make them up for him.

Q. They may or may not be made up?

A. Yes sir.

That is all.

(Witness excused.)

(11:20. Recess for ten minutes.)

(11:35 A. M.)

Mr. Hite: Your Honor, before the government proceeds to the next count, I would ask the court if the court examined this last exhibit with reference to our objection as to the alteration on that also?

The Court: Yes.

Mr. Hite: The Court understood that was included in our objection?

The Court: Yes.

756 MAURICE GLICKMAN, called as a witness on behalf of the plaintiff, having been first duly sworn, testifies, as follows:

## Direct examination.

## Questions by Mr. Robertson:

Q. What is your name?

A. Maurice Glickman.

Q. Where do you live Mr. Glickman?

A. I live in Philadelphia.

Q. Pennsylvania?

A. Pennsylvania.

Q. What is your business?

A. My business is manufacturing men's clothing.

Q. Under what firm or trade name, if any, do you do business?

A. I do business under my own name, M. Glickman & Co.; my name is Maurice.

Q. You are the sole member of the firm?

A. Yes sir, there is only one member.

Q. Do you know the defendant George S. Badders?

A. Yes sir. I know him.

Q. How long have you known him?

A. Well I have known him for a couple of years.

Q. I hand you a paper that has already been referred to in this case as Exhibit No. 75 and you find it so marked, and ask you if you have seen that before?

A. This letter, yes this come to me by itself.

Q. Let me ask you; how did you come to see it?

A. Because I opened the mail.

The Court: Well, did you receive the letter through the mail?

A. Yes.

Mr. Robertson: Where abouts?

A. Well, in Philadelphia, in my office.

Q. When did you receive it?

A. I received this in the month of December, about two days later, about December 4th.

Q. About two days later than the date this bears?

757 A. Yes.

Q. I will ask you whether or not it was enclosed in an envelope?

A. Oh yes.

Q. It was?

A. Certainly.

Q. Have you the envelope?

A. No I never keep envelopes; I always put them away in a basket.

Q. What did you do with this envelope?

A. I don't save no envelopes.

Q. The envelope was destroyed?

A. Yes, all the time.

Q. Do you remember anything about what was on the envelope?

Mr. Hite: Object——

The Court: How do you receive your mail by carrier at your place, letter carrier of the United States?

A. Yes, United States letter carrier.

Q. United States letter carrier; well did he deliver this paper to you?

A. Yes sir.

Q. And it was contained in an envelope?

A. Yes sir.

Q. And you destroyed the envelope?

A. Yes sir.



Mr. Robertson: Offer Exhibit No. 75 in evidence.

The Court: Can you state whether the envelope in which was contained this letter bore the post mark, mark of postoffice?

A. Yes sir, Your Honor, yes sir.

Mr. Hite: Object to that, Your Honor, as calling for secondary evidence.

The Court: Well, as I understand it, whether secondary evidence or otherwise, he says that the envelope that he had was destroyed, and he has not got it in his possession, don't know where it is, and

758 then I asked him the question as to whether the envelope that contained that letter bore any post mark upon it, and you say that is secondary; it may be secondary; go on sir; you may object to the letter. He offers the letter.

Mr. Hite: We object to the introduction in evidence of this letter for the reasons heretofore given as to Exhibit No. 72, as applicable to this letter, and specially object to this letter because there is no evidence whatever showing or tending to show that the portion of the paper under the purported signature of the defendant was placed there by his authority.

Mr. Robertson: The offer, Your Honor, is not intended to include any lead pencil notations.

Mr. Hite: I am not referring to lead pencil notations, but to type-writing appearing on the letter; there is no evidence that was on the letter at the time of the purported signing of it by the defendant.

The Court: Was this letter in the condition it now is when you received it, except these pencil marks?

A. Yes sir, Your Honor.

The Court: You may read it.

Mr. Hite: Except.

Mr. Robertson, reading Exhibit No. 75.

(A copy of Exhibit No. 75 is attached hereto and made a part hereof.)

Q. Are you a creditor of the Badders Clothing Company?

A. Yes sir.

Q. To what amount Mr. Glickman?

A. About two hundred and sixty dollars.

Q. About two hundred and sixty dollars?

A. About two hundred and sixty dollars.

Cross-examination.

Questions by Mr. Hite:

The Court: Please confine this cross examination to what has been brought out in the chief examination.

Q. Mr. Glickman did you testify before the Grand Jury in this matter?

759 Mr. Robertson: Objected to as immaterial.

The Court: Sustained.

Mr. Hite: Except.

Mr. Hite: The purpose of the inquiry, I may say, Your Honor, is to determine whether he testified to the Grand Jury to the effect the envelope had been lost.

The Court: Well he need not state what he testified to before the Grand Jury, if he did testify before a Grand Jury.

Mr. Hite: Except.

Q. Mr. Glickman did you ship any goods to the Badders Clothing Company in response to this letter?

A. I shipped only one bill.

Q. Was that in response to this letter?

A. No, I didn't ship any more; I shipped only the first bill.

Q. And that was before this letter was received?

A. Oh yes.

Q. What were the terms that you sold the bill of goods on that you did sell to the Badders Clothing Company.

The Court: I do not think that is cross examination. He asked him nothing about the terms or anything about it.

Mr. Hite: Except.

(Witness excused.)

JOSEPH SELIGMAN, called as a witness on behalf of the plaintiff, having been first duly sworn, testifies, as follows:

Direct examination.

Questions by Mr. Robertson:

Q. What is your name?

A. Joseph Seligman.

Q. Where do you live Mr. Seligman?

A. I live in New York City.

Q. With what firm, if any, are you connected?

A. Cohen, Goldman & Company, of New York.

Q. How long have you been connected with Cohen, Goldman & Co.?

A. Twenty six or twenty seven years.

760 Q. Is that a partnership or corporation?

A. Partnership.

Q. State if you know of whom the partnership consists?

A. Hyman Cohen and William Goldman, the company is nominal.

Q. How long has the firm of Cohen, Goldman & Company been constituted as you have described?

A. Ever since they were in business.

Q. How long has that been?

A. About twenty seven years.

Q. Were you in their place of business say from the first to the tenth of December of 1913?

A. Yes sir.

Q. What are your duties there Mr. Seligman?

A. Credit and General Manager.

Q. I hand you a paper which has been heretofore referred to in this case as Exhibit No. 76 and ask you if you have seen that before?

A. Yes sir.

Q. When and under what circumstances did you first see it.

A. I was the one who opened the letter when it was received.

Q. About when and where was it received?

A. Why it was received in New York about the 7th of December I should say.

Q. Of what year?

A. 1913.

Q. Now in what manner was it received by you?

A. It was in reply to a letter of mine I had written to Mr. Badders refusing an order of ours.

Q. Was it received by you in the regular course of the United States mail?

A. Yes sir.

Mr. Hite: Object to that question and the answer as drawing conclusion of the witness.

The Court: How is your mail delivered to you there?

A. Letter carrier.

Q. United States letter carrier?

A. United States letter carrier?

761 Q. Delivered at your place by a letter carrier?

A. Yes sir.

Q. Was this letter so delivered?

A. Yes sir.

Q. You received it?

A. Yes sir.

Q. And opened it?

A. Yes sir.

Q. What did you do with the envelope?

A. Threw it away.

Q. And the envelope was destroyed then?

A. Yes sir.

Q. You haven't it now?

A. I haven't it now.

Mr. Robertson:

Q. Do you recall anything about what was on the envelope; can you say whether it bore a post mark or not?

A. Yes sir.

Q. It did?

A. Yes sir.

Mr. Robertson: We offer Exhibit No. 76 in evidence.

Mr. Hite: To which the defendant interposes the same objection heretofore interposed to Exhibit No. 73, and subsequent exhibits, except the objection is not interposed there is any alteration or appearance of alteration in that paper. I was mistaken in the exhibit, Your Honor, and this objection includes the objection it appears to have been altered and no explanation given of the altera-

tion. We make the same special objections to this letter as made heretofore as to the last previous exhibit that there is no evidence showing that the matter appearing on the face of the paper in type-writing below the signature alleged to be that of the defendant was written there at the time that the letter was signed nor does it appear from the evidence that such matter below the signature was written by authority of the defendant.

The Court: The letter was in the condition it is now in  
762 when you received it?

A. Yes sir.

The Court: Well, is that the letter?

A. This is the same letter we received at the time the letter carrier delivered it.

The Court: Read it.

Mr. Hite: Except.

Mr. Robertson: Reading Exhibit No. 76.

(A copy of Exhibit No. 76 is attached hereto and made a part hereof.)

Q. Did you ever see the defendant Badders in New York City?

A. Yes sir.

Q. When was that?

A. About November 1913. About November 20th.

Q. Did you have a conversation or conversations with him in New York?

A. I did.

Q. Where?

A. In my office.

Q. In the presence of whom?

A. Mr. Boyd, and I believe an assistant of mine.

Q. Sir?

A. An assistant of mine.

Q. One of your assistants?

A. Yes sir.

Q. I wish you would kindly detail the conversation as you remember it?

A. Mr. Badders came into our place, I believe the day before I had this conversation and placed an order with us for about twenty six, twenty seven hundred dollars, I am not quite positive of the exact amount, which we were preparing for shipment, and during the course of the two days I had quite a number of inquiries from other houses that Mr. Badders had placed orders with, and I decided that I would not ship the order so placed with us until I had——

Mr. Hite: We ask him to confine his testimony to the conversation.

763 The Court: State what the conversation was.

A. I told Mr. Badders at that time I had learned he had placed orders to the amount of twenty, between twenty and twenty six thousand dollars, and asked him to explain his reasons for such

liberal purchases; Mr. Badders told me at that time he was putting on a sale, and I asked him then whether it was necessary for him to have that amount of merchandise; he told me that the orders he had placed were partly conditional, and that he subsequently cancelled a part of same which I afterwards learned was not so.

Mr. Hite: Object to that Your Honor and ask that it be stricken out.

The Court: That may be stricken out. State the conversation you had with Mr. Badders and confine yourself to that conversation.

A. I then asked him for a statement of his affairs which he said he would send me on his arrival home, which I had never received; I also spoke to him about the payment of our account which was then about due and he promised to send me a check for the same; he subsequently did send a check but which was only for a part of it.

Q. What if anything was said there about the capital stock of the Badders Clothing Company?

A. Yes sir, he told me he had just arranged the capital stock was to be increased from thirty five to sixty thousand dollars; I asked him who put in the additional amount of money and he told me that quite a number of people of his town had contributed and that the twenty five thousand dollars was paid in in cash.

Q. Is the firm of Cohen, Goldman & Company today a creditor of the Badders Clothing Company?

A. Yes.

Q. In what amount, if you know?

A. I think it is near five hundred dollars.

The Court: How much?

A. Five hundred.

Cross-examination.

764 Questions by Mr. Hite:

Q. This letter, Mr. Seligman, is it, referring to Exhibit No. 76, is in part an answer to a previous letter that you wrote, is it not?

A. Yes sir.

Q. Part of the correspondence on this subject?

A. I don't get that Mr. Hite.

Q. It is a part of the correspondence on this subject of this letter?

A. What subject do you refer to.

Q. The subject of this letter?

A. That is in reply to a letter of mine asking him to accept the goods for cash.

Mr. Hite: We ask, Your Honor, the exhibit be taken from the consideration of the jury without the production of the remainder of the correspondence, of which this is a part.

The Court: Well, it will not be taken and any motion to that effect is overruled.

Mr. Hite: Except.

Q. Mr. Seligman did you testify before the Grand Jury in this matter?

A. No sir.

Mr. Robertson: Object to that.

The Court: He has answered that question and says no.

Mr. Hite:

Q. What does your house manufacture in the way of clothing?

A. Pants, overcoats, rain coats, summer clothing, thin coats.

Q. You say that there was an order made by Mr. Badders?

A. Yes sir.

Q. Have you got a copy of that order?

A. I haven't it with me, no.

Q. Why didn't you bring it out here?

A. Why it might be in the District Attorney's hands.

Q. Did you send the District Attorney all the paper you had connected with this matter?

A. No sir.

Q. Were you asked to send them all to him?

765 A. No sir.

Mr. Hite: Defendant asks the United States Attorney if he has a copy of the order referred to by the witness?

Mr. Brady: What is the date of it?

Mr. Hite: November, I think you fixed the date in November?

A. About November, yes.

Q. Would it be in that month?

A. I believe it would.

Mr. Robertson: If we have it you can certainly have it.

Mr. Hite: We will proceed with the examination and they may find that order.

The Court: Go on.

Mr. Hite:

Q. Who was the salesman in your house that sold Mr. Badders?

A. I don't recall.

Q. You didn't do it personally?

A. No sir.

Q. You say you had two conversations with him?

A. Only one.

Q. I understood you to say the day before he had been in the store to buy some goods?

A. I didn't meet Mr. Badders at that time.

Q. Am I right Mr. Seligman; you said he had been in the store the day before you met him to buy some goods?

A. He had placed the order at that time.

Q. And you don't know with whom he placed the order?

A. No sir.

Q. Now how much do you say that order was for?

A. In the neighborhood of twenty five hundred dollars.

Q. For pants?

A. I don't recall what it was for.

Q. Well that was your principal article of sale?

A. Not necessarily.

Q. Well is it?

A. Not necessarily; we sell overcoats, rain coats and pants and great many other things.

Q. What was it you sold the Badders Company?

766 A. I don't know.

The Court: He says he was there on the day before and made certain purchases and he never saw him until the following day when he had this conversation with him.

Mr. Hite:

Q. Do you know what purchases he made?

A. I told you I didn't know what class of purchases he made.

The Court: We will not get into any controversy about it; the testimony is the man came there one day and he didn't see him.

Mr. Hite:

Q. Does your firm take Bradstreet or Dunn Mercantile reports?

A. Yes sir.

Q. Did your firm receive a mercantile report with reference to the increase in capital stock of the Badders Clothing Company?

A. Subsequently.

Q. Subsequently; did you learn from those reports the increase in capital stock was in notes?

A. After the transaction was practically closed.

Q. You learned that?

A. That is some time in December.

Q. Had you then shipped the goods?

A. No sir.

Q. Did you ship any goods after you had this conversation with Mr. Badders?

A. Yes sir.

Q. But that was a shipment made after you received the Dunn's report?

A. No sir.

Q. Before?

A. Before.

Q. How much goods did you ship?

A. Two hundred and eighty dollars' worth.

Q. Were those goods that were ordered by Mr. Badders when he was there?

A. Part of same I believe.

Q. Had any of those goods been ordered previously?

767 A. Ordered previously to——

Q. Ordered previously to his visit there?

A. No sir.

Q. How did it happen Mr. Seligman he left an order for twenty five or twenty six hundred dollars' worth and you shipped about two hundred and sixty dollars' worth?

A. On the strength of his letter saying he was willing to pay cash.

Q. Why didn't you ship the whole lot?

A. He didn't ask for it.

Q. I understood you to say he left an order for twenty-five or twenty-six hundred dollars' worth of goods?

A. He did.

Q. Why didn't you ship?

A. Because I didn't want to extend the credit.

Q. Why did you ship any?

A. Because he promised to pay cash for two hundred and eighty dollars' worth that he ordered shipped.

Q. When was that to be paid?

A. Upon receipt of goods.

Q. Upon receipt of goods? and when were these goods shipped?

A. Some time early in December.

Q. Are you able to fix the date?

A. I am not.

Q. Did you know those goods were ordered for a sale?

A. Yes sir.

Q. He told you he was putting on a sale?

A. Yes sir.

Q. He told you also that while his orders appeared to be for a large amount that he was cancelling some of those orders, did he?

Q. He told you also that while his orders appeared to be for

Q. Did he say anything to you about having cancelled some of the orders made previously to his visit to New York?

A. Yes sir.

Q. Did he give you any references?

A. No sir.

768 Q. Did he tell you they had been doing business with the Stein-Bloch Company?

A. No sir.

Q. Did you know that fact?

A. I learned it.

Q. When did you learn that?

A. Oh, when we first started the account I believe.

Q. Did you then refer to the Stein-Bloch Company with reference to the financial condition of the Badders Clothing Company?

A. I did not.

Q. When did you begin doing business with the Badders Clothing Company?

A. I should say about a year prior to 1913.

Q. Had you always been paid for the goods that you sent?

A. Yes sir.

Q. Up to this last matter?

A. Yes sir.

Q. You say that you received some money on account of your debt from Mr. Badders?

A. Well, not for the goods that were shipped in December, that was goods shipped prior to Mr. Badders' visit.

Q. Mr. Seligman as I understand it you didn't ship on this matter



of the December conversation but about two hundred and sixty dollars' worth of goods, is that right?

A. That is right.

Q. And afterwards how much money did you receive from Mr. Badders of the Badders Company?

A. I didn't receive any after that.

Q. You didn't receive any after that. How long before that was it you had received any money?

A. Possibly a week.

Q. Possibly a week?

A. A week or ten days.

Q. Do you say Mr. Seligman that your firm did not get a check from Mr. Badders after he returned home from that visit?

769 A. I did not say so.

Q. Well did you receive a check?

A. Yes sir.

Q. How much was that for?

A. About one hundred and nineteen dollars.

Q. Was that in part payment of this two hundred and sixty dollars?

A. No sir.

Q. That was for some previous bill?

A. Previous shipment.

Q. At the time you received that check had you shipped these goods?

A. No sir.

Q. Were they not for immediate shipment?

A. Which?

Q. The two hundred and sixty dollars' worth of goods?

A. They sure was.

Q. Why had you not shipped them more promptly then?

A. I believe the letter tells you why.

Q. Well suppose you tell me Mr. Seligman?

A. Because I didn't want to extend the credit.

Q. And after you got this one hundred and nineteen dollars or whatever sum it was you sent on the goods?

A. The payment of this bill had nothing to do with the credit of this one particular shipment.

Q. Have you stated the substance of all that was said to you by Mr. Badders there on that occasion Mr. Seligman?

A. As far as I can recollect.

Q. Are you a member of the National Credit Men's Association?

A. Yes sir.

Q. Has your firm contributed anything to a fund to pay the expenses of litigation involved in this Badders matter?

A. Haven't contributed any money.

Q. Sir?

A. Haven't contributed any money.

Q. Has your firm been asked to contribute?

770 A. Possibly.

Q. What is the fact as far as you know.

A. For the searching for some goods that were missing at the time of the bankruptcy case was being tried, and also for the location of Mr. Badders, who was then not to be found.

Q. When? When you made this contribution?

A. We made no contribution.

Q. When you were asked to make the contribution?

A. Yes sir.

Q. You say he wasn't to be found?

A. Yes sir.

Q. How did you learn that?

A. Through the reports of the Clothiers' Association.

Q. Clothiers' Association then reported that Mr. Badders was not to be found?

A. Yes sir.

Q. And you got that information through that source?

A. Yes sir.

Q. And you were asked to contribute to a fund to find him?

A. Yes sir.

Q. And to find some goods?

A. Yes.

Q. About when was that request made to you?

A. I don't recall the exact date.

Q. Can you give us the month?

A. No sir.

Q. Have you got the request that was made of you?

A. No sir.

Q. Was it in writing?

A. It was typewritten I believe.

Q. Typewritten?

A. Yes sir.

Q. Do you know who sent it?

A. I have no idea.

Q. Any Topeka parties?

A. No sir.

771 Q. Somebody connected with the Credit Men's Association?

A. No sir.

Q. You don't know who it was?

A. Well the letter we received we got through the Clothiers' Association, has no connection with the Credit Men's Bureau.

Q. That is another association?

A. Yes sir.

Q. Did you contribute anything to them?

A. Why I don't recall Mr. Hite.

Q. Do you know whether that association has provided any fund for the expenses of any litigation against the Badders Clothing Company?

A. I am pretty sure not.

Q. Sir?

A. I am pretty sure not.

Q. What is the name of that concern please Mr.—

A. What concern?

Q. The Credit Men's Clothiers' Association?

A. The Clothiers' Association of New York.

Q. Who is the president or secretary or manager?

A. All correspondence appertaining to anything of this kind would come through the Adjustment Bureau Mr. H. Rosneberg is the manager.

Q. Is his address in New York?

A. Yes sir.

Q. Whereabouts?

A. Thirteen Astor Place.

Mr. Robertson: Mr. Hite here is the paper I think you refer to.

Mr. Hite: Please examine the paper which I now hand you Mr. Seligman and state whether those are the orders, or the order that was left by Mr. Badders?

A. No sir.

Q. It is not?

A. No sir.

Q. Well are these copies of orders of goods shipped to the Badders Clothing Company.

772 A. Yes sir.

Q. Is that the shipment of two hundred and sixty dollars?

A. Two hundred and eighty dollars.

Q. Two hundred and eighty dollars?

A. Yes sir.

Q. And that order was entered on December 6th was it not?

A. Yes sir.

Q. Mr. Badders wasn't there then?

A. He was not there then, no.

Q. At the time that he was there did he leave any order at all?

A. Yes sir.

Q. Where is that order?

A. Why I don't know.

Q. Well was that order ever filled?

A. No sir it was not.

Q. It was not; then this order of December 6th, 1913,—as to this order of December 6, 1913, was that made with reference to this letter Exhibit No. 76?

A. Yes sir.

Q. I thought there was a discount of nine per cent off of the price of these goods?

A. Providing the bill was paid cash.

Q. Suppose it was not paid cash there would be no discount would there?

A. There was no other term allowed.

Q. I call your attention to this matter, this statement in the letter, "and under the circumstances will accept the coats for cash nine per cent off."

A. Yes sir, that was the condition of the sale.

Q. For cash nine per cent off?

A. Yes sir.

Q. Well did you write to the Badders Clothing Company and ask for this two hundred and eighty dollars?

A. We sent them a statement I believe.

Q. Do you know when that was sent?

A. I don't recall the date.

773 Q. Did you have anything to do with sending that?

A. I ordered it sent.

Q. Is that all that you did looking to the collection of this?

A. We were notified in the interim I believe of some trouble and I didn't figure I could get the money.

Q. I didn't ask you that Mr. Seligman; I asked you what you did looking to the collection?

A. I told you what I did.

Q. Just sent the statement?

A. Couldn't do anything else.

Q. I didn't ask you that.

The Court: Well you sent the statement?

A. Yes sir.

Mr. Hite:

Q. And is that all you did?

A. I couldn't do anything else.

The Court: Well, that is all you did?

A. All I did yes sir.

Mr. Hite:

Q. And yet I understand you to say that these goods were sold on a basis of cash upon receipt of them?

A. Yes sir.

Q. And according to the terms of the sale, as you stated, you should have had the money by return mail?

A. Should have.

Q. When it didn't come by return mail you didn't ask for it did you?

A. Yes sir, I did; sent a statement for it.

Q. And that was all you did?

A. Yes sir.

Q. And you don't know whether that was by return mail or not?

A. What do you mean?

Q. That you sent the statement?

Mr. Robertson: Objected to as immaterial.

The Court: Well you didn't get any money?

A. No sir.

774 Mr. Hite: We ask to be permitted to cross examine this witness about this matter of the terms of the sale, and this goes directly to that.

The Court: He has stated the terms of the sale and you may cross examine him if you have not already in regard to that matter.

Mr. Hite: The witness is not as frank as he may be.

A. I am as frank as I can be, sir.

The Court: I don't think that is justified, that statement.

Mr. Hite:

Q. Now Mr. Seligman you say you sent a statement of the amount due from the Badders Clothing Company on account of this two hundred and eighty dollar cash purchase, is that true?

A. I want to——

Q. You can answer that yes or no.

A. Well, there were other bills that were due then besides this; this particular bill I sent a statement for asking remittance.

Q. For this particular two hundred and eighty dollars?

A. Yes sir.

Q. When did you send that statement?

A. I don't recall the exact date; I told you it was some time after the goods were shipped.

Q. Do you know when the goods were received?

A. By the Badders Company?

Q. Yes?

A. I do not.

Q. And as I understand it you don't know except that it was after the goods were shipped when you sent this statement, is that true?

A. Yes sir that is right.

Q. Now I understand you to say that Mr. Badders' conversation with you, and his agreement with you, was to pay for these goods upon their receipt in cash nine per cent off?

A. The letter shows so.

The Court: That was what the agreement was?

A. Yes sir.

775 Mr. Hite:

Q. You didn't get your money upon receipt of the goods did you?

A. No sir.

Q. Did you ever write the Badders Clothing Company a letter requesting specially a remittance of this two hundred and eighty dollars' cash purchase?

A. No sir.

Q. Why didn't you do that Mr. Seligman?

A. Because I was informed of some trouble.

Q. Is that the only reason that you didn't write the letter?

A. Yes sir.

Q. If you hadn't been informed of that trouble you would have written the letter?

A. I certainly would.

Q. When were you informed of that trouble?

A. Some time near the end of December I believe.

Q. Who informed you about it?

A. I believe I learned of it through the Trade Record.

Q. Through the Trade Record. Then what did you do looking to the collection of your claim?

A. Handed my claim to the adjustment bureau of the Clothiers' Association.

Q. Do you know what they did with it?

A. I do not.

Q. So as far as your firm is concerned the sole and only effort your firm made for the collection of their cash purchase of two hundred and eighty dollars was to send this statement you refer to?

A. Had no time to do anything else.

(Witness excused.)

Miss HELEN COHN, called as a witness on behalf of the plaintiff, having been first duly sworn, testifies, as follows:

776 Direct examination.

Questions by Mr. Robertson:

Mr. Hite: Which count is this Mr. Robertson.

Mr. Brady: No. seven.

Mr. Robertson: I ask counsel whether it may be admitted and is admitted——

The Court: What?

Mr. Robertson: I ask counsel whether they will admit that Rosenwald & Weil is a corporation of Chicago, Illinois, incorporated under the laws of the State of Illinois, as alleged in the indictment?

Mr. Hite: I think we can, Your Honor, if you will permit me to refer to my papers a moment. You can go ahead with the other matter Mr. Robertson.

The Court: Well, ask this witness, if he don't admit it, if you have the corporate papers there; you can admit it afterwards.

Mr. Hite: I am making no objection to the order of proof.

Mr. Robertson:

Q. What is your name?

A. Helen Cohn.

Q. Where do you live?

A. Chicago.

Q. What is your business?

A. I am with Rosenwald & Weil.

Q. How long have you been with Rosenwald & Weil?

A. Over twenty years.

Q. I hand you a paper which has been heretofore referred to as Exhibit No. 77 and ask you if you have seen that before?

A. Yes sir.

Q. About when did you first see it?

A. When it first came in December ninth; this is my mark on here, this stamp.

Q. December 9th, when?

A. 1913.

Q. What year?

A. 1913.

77 Q. Ask you whether you received that through the regular course of the United States Mail?

A. Yes sir.

Q. Was it enclosed in an envelope when you received it?

A. Yes sir.

Q. Have you the envelope?

A. No sir.

Q. State if you know what was done with it?

A. We destroy all our envelopes.

Q. That envelope was destroyed, was it?

A. Yes sir.

Q. Did you receive it personally?

A. Not in my own hands first.

Q. Did you see it received?

A. No sir.

Q. Did you see it while the envelope was attached?

A. No sir.

Q. Well you say you know it was received through the regular course of the United States mail?

A. Yes sir.

Q. Well how do you know that?

A. Because all the mail comes to me right from the department.

The Court: Do you know anything personally about this particular letter?

A. Yes sir.

Q. Except that it was delivered to you after it was opened?

A. Yes sir.

Q. You didn't see it while it was in the envelope.

A. No sir.

Q. Didn't see the envelope?

A. No sir, not in the envelope.

Q. Don't know how it got in there except what was told you?

A. It came through the mail as all the mail does.

Q. But you didn't open the mail?

A. No sir.

Mr. Hite: We object to the witness' testimony as incompetent and hearsay.

778 The Court: I think the objection is well taken.

Mr. Robertson: Does the letter bear the receiving stamp of your firm?

A. Yes.

Q. Who attached that, if you know?

A. I did.

Mr. Robertson: We offer exhibit No. 77 in evidence.

The Court: That the Exhibit. It ought to be very plain that to identify a letter that goes through the United States mail the person who you introduce as a witness must have received that letter from the mail carrier and knows that it was contained in an envelope, bearing the postmark of some town.

Mr. Robertson: The offer is withdrawn.

The Court: Well, if you withdraw it, then go on.

Mr. Robertson: That is all.

(Witness excused.)

The Court: Is there any other evidence that you desire to introduce about this count seven, or is that all?

Mr. Robertson: We have some other evidence. I will consider that until after lunch Your Honor. We have some other circumstances connected with this.

Mr. Robertson: Count eight has been eliminated, or will be.

The Court: You offer no evidence on count eight.

Robertson: One and eight.

The Court: No evidence offered on No. eight.

EDWARD G. GRIFFITH, called as a witness on behalf of the plaintiff, having been first duly sworn, testifies, as follows:

Direct examination.

Questions by Mr. Robertson:

Q. State your name?

A. Edward G. Griffith.

Q. Are you Mr. E. G. Griffith?

A. Yes sir.

779 Q. Where do you live?

A. Kansas City, Mo.

The Court: What count is that on sir?

Mr. Robertson: This is on count nine.

Q. How long have you lived in Kansas City, Mo.?

A. Fourteen years.

Q. In what business were you engaged during the year of 1913?

A. Manager for Cluett Peabody & Company branch office at Kansas City, Mo.

Q. How long had you at that time been with Cluett Peabody & Co.?

A. Thirty years.

Q. Are you still with Cluett Peabody & Company?

A. No sir.

Q. When did you sever your relation Mr. Griffith?

A. July first, 1914 I resigned; that is, I worked one month after that with them to work in the new manager.

Q. Are you acquainted with the defendant George S. Badders?

A. No sir.

Q. Never met him you say?

A. No sir.

Mr. Robertson: I ask counsel whether they will admit that Cluett Peabody & Company is a corporation, as alleged in the indictment?

Mr. Hite: No sir.

Mr. Robertson: We offer in evidence Exhibit No. 94, which counsel is familiar with.

The Court: Pass it to counsel; have you seen this?

Mr. Hite: Yes sir, I have examined it, and the point of the objection is the name of the corporation as stated in the indictment technically is not the name of the corporation stated in the paper; it leaves out the word, which seems to have been made a part of



the name of the corporation, inc., after the name and I would not have made this objection except for that fact.

780 The Court: No apology is necessary.

Mr. Hite: I think it is in this particular case, Your Honor; it seems to be very small; this paper will show that this Cluett Peabody Company, incorporated, or Inc. is the result of a consolidation of the Apex Collar Company and another concern by the name of Cluett & Peabody Company, and in the articles of this agreement this new name with this additional was accepted as the name to be applied to the consolidated corporation, and for that reason we object as not appearing in the indictment; it is a lengthy document and we do not ask it shall be read. The Inc. is not in the indictment.

The Court: The Inc. means incorporated ordinarily.

Mr. Hite: I think so yes sir.

The Court: Otherwise you have no objection?

Mr. Hite: No sir. And I do not care that it should be read because it is very voluminous. That is the only objection the defendant urges.

The Court: Overruled.

Mr. Hite: Except.

The Court: And the paper is offered and may be considered in evidence for all purposes.

(A Copy of Exhibit No. 94 is attached hereto and made a part hereof.)

Mr. Robertson:

Q. I hand you a paper heretofore referred to as Exhibit No. 79 and ask you if you have seen that before?

A. Yes sir.

Q. You receive that yourself personally?

A. Yes sir.

Q. From whom?

A. Letter carrier.

Q. Of the United States?

A. Yes sir.

Q. Through the United States mail?

A. Yes sir.

Q. Whereabouts?

781 A. At our office Eighth & Broadway, Kansas City, Mo.

Q. And when did you receive it Mr. Griffith?

A. Well I received it on or about the 8th of December 1913, or the tenth of December 1913.

Q. Was it enclosed in the envelope?

A. Yes sir.

Q. Have you the envelope?

A. No sir.

Q. What was done with it?

A. Destroyed.

Q. Do you remember whether that envelope contained a postmark upon it, and if you do so remember, *what* whether it did or not?

A. Well I can't recall that; the reason of that is because you know when the mail is opened the envelopes are destroyed.

The Court: Did you open the letter?

A. Yes sir I opened the letter.

Q. And you received it from a letter carrier?

A. Yes sir.

Mr. Robertson: Offer Exhibit No. 79 in evidence.

Mr. Hite: We interpose the objection to this letter that heretofore has been interposed to Exhibit No. 73 and 72 both, and to its present admission now we interpose the special objection that it is not shown that this witness, who appears to have received the letter, knows whether the envelope, which appears to have been destroyed, contained any post mark on it.

The Court: The fact he received it from a letter carrier carrying the United States mail is certainly sufficient to justify the court in admitting it.

Mr. Hite: Except. May I ask a question about that Your Honor?

The Court: Yes.

Mr. Hite:

Q. Mr. Griffith, do you recall if particularly with reference to this particular matter, whether or not there was a postage stamp on the envelope, have you any independent recollection of that now?

782 A. The only reason I have, we wouldn't have gotten it without the postage stamp on it.

Q. Aside from that you don't recall then whether any postage stamp — on it?

A. Not the slightest recollection except we couldn't have received it unless it had a postage stamp on it.

Q. And it is only for that reason that you now undertake to say there was one?

A. Yes.

Q. You have no independent recollection of that particular envelope and post mark at all, have you?

A. None whatever.

The Court: The Court has ruled upon the possession by the letter carrier of the United States mail, and the delivery by him to this witness is sufficient to authorize the matter to go to the jury.

Mr. Hite: If Your Honor will permit it, for the record, we ask the court's attention to the charge in the indictment with reference to this particular letter, that it bore a United States two cent postage stamp, and that there is no evidence tending to show that such was the fact, and ask Your Honor to consider that in ruling.

The Court: Yes, and the court in considering that considers the law governing the passage of letters through the post-office, by the requirement of the law, and it coming into the possession of a letter carrier, the presumption is the stamp was on it and the objection is overruled.

Mr. Hite: Except.

Mr. Robertson: Reading Exhibit No. 79.

(A copy of Exhibit No. 79 is attached hereto and made a part hereof.)

(12:30 P. M. recess of Court until two o'clock.)

(2 O'CLOCK P. M.)

E. G. GRIFFITH (on the stand).

783 Questions by Mr. Robertson:

Q. Had the Cluett Peabody Company under your management at Kansas City had business relations with the Badders Clothing Company previous to December 8, 1913?

A. Yes sir.

Q. I will ask you whether at the time you received this letter Exhibit No. 79, whether you had before you at that time an order from the Badders Clothing Company for some of your goods?

A. Yes sir.

Q. Just explain about that, what the circumstances were?

A. On or about December 2, 1913, we received an order from Mr. Badders, or from the Badders Company, for about one hundred and ninety dozen of collars; he at that time owed us in the neighborhood of two thousand dollars; we didn't feel at liberty to make this shipment before we had received a liberal payment from him of his long past due account. I held this order expecting that the Badders Company would respond to our statement which we sent out the first of the month, but he didn't, so I wrote him on December 6th, 1913, calling his attention to his long past due account and asking him to send us a check in the neighborhood of nine hundred dollars and in answer to that letter I wrote December 6th I received this one you have in your hand.

Mr. Hite: If Your Honor please, like to know if the witness has the letter, or the government has the letter just referred to as having been written to the Badders Clothing Company.

The Court: Have you got the letter written there to them at that time?

Mr. Robertson: I don't think so.

The Court: Written to the other party, wouldn't naturally come into the hands of this witness.

A. Well I have a copy of it, don't make any difference.

784 Mr. Robertson: I have never seen it any way.

A. I have a copy of the letter I wrote him, December 6, 1913, in which that letter was, his letter to us——

Mr. Hite: Object to the witness testifying as to what was in the other letter.

The Court: Well introduce this if competent.

Mr. Robertson:

Q. Is the original letter in your control?

A. The copy of the letter I wrote on Dec. 6th is in my possession.

Q. Have you any control over the original?

A. No sir.

Q. That is not in your possession?

A. No sir, that was sent to Mr. Badders.

Q. Produce the copy.

A. Produce it?

Q. Yes.

A. Witness producing letter.

Paper marked Exhibit No. 95.

Q. I hand you a paper marked exhibit No. 95 and ask you if that is the copy?

A. This is the copy; just a moment, let me see that. This is the copy of the letter that I wrote him.

The Court: Have you identified that letter, the answer to that letter as having been written by this defendant; that is exhibit what?

Mr. Robertson: This he holds in his hand, this is Exhibit No. 79, which says, "Your favor of 6th is at hand."

A. That is the answer to this.

The Court: Well.

Mr. Robertson:

Q. Now I will ask you whether you were then the auditor?

A. No, I signed that.

Q. Signed the auditor's name?

A. Yes.

The Court: And you wrote the letter yourself.

A. Yes.

85 A. And you got that in answer to it?

A. Yes sir.

Mr. Robertson: What did you do with the original of that?

A. Sent it to the Badders Company.

The Court: The original went to the man he answered.

Mr. Robertson: Thought may be I ought to show he deposited it in the mail.

The Court: Oh no.

Mr. Robertson: We offer Exhibit No. 95 in evidence.

Mr. Hite: We object to the offer on the ground that it is incompetent and secondary evidence, and no proper foundation been laid for the introduction of secondary evidence; the contents of a paper, which the testimony thus far indicates went into the hands of the receiver.

The Court: You may read the paper.

Mr. Robertson: Reading Exhibit No. 95.

(A copy of Exhibit No. 95 is attached hereto and made a part hereof.)

Mr. Robertson:

Q. Now after you received this Exhibit No. 79——

The Court: You may read that exhibit so as to get it in connection with this letter.

Mr. Robertson reading Exhibit No. 79.

Q. Now, after getting this Exhibit No. 79, what if anything did you do with that order you had under suspension there?

A. Shipped it to him upon the information contained in that letter.

Mr. Hite: We object to that Your Honor.

Mr. Robertson: Exhibit No. 79 is the count letter, ninth count; already been read once.

Q. Now, upon the receipt of Exhibit No. 79 what if anything did you do?

A. I shipped the order that we were holding.

Q. Did you thereafter receive any money from the Badders Clothing Company?

A. No sir.

Q. State if you know how much you are a creditor of that company.

A. In the neighborhood of two thousand dollars; I can't give the exact amount, in the neighborhood of two thousand dollars, little more probably.

#### Cross-examination.

#### Questions by Mr. Hite:

Q. Mr. Griffith how long did your transactions, or the transactions of the Cluett Peabody & Company with the Badders Clothing Company extend over what period?

A. Well our business in connection with the Badders Company was a continuation of the Marshall Clothing Company.

Q. You had done business with the Marshall Clothing Company?

A. Yes sir.

Q. You remember when the Marshall Clothing Company's name was changed to the Badders Clothing Company?

A. I can't recall just at present.

Q. You remember the circumstance?

A. I remember it very well.

Q. At that time that company was indebted to the Cluett Peabody Company were they not.

A. Yes sir.

Q. Do you recall the fact that he had had a sale previous to the one of December a year ago?

A. I can't quite remember that part of it.

Q. Do you remember the circumstances?

A. Yes I remember the circumstances.

Q. And do you recall the fact the Cluett Peabody Company received their pay?

A. Yes sir.

Q. Their bill was paid in full was it not?

A. Yes sir.

Q. Mr. Griffith was the shipment that you have testified about the last shipment that your firm made to the Badders Clothing Company?

A. Yes sir.

Q. Did you not receive from the defendant a letter advising you to hold the order for revision?

A. No sir.

Q. You did not receive such a letter?

A. No sir, this particular order now you refer to the last order I shipped him.

Q. Yes sir?

A. No sir.

Q. Was any order of that kind received?

A. No sir.

Q. Did you not at any time write, or your firm write to the Badders Clothing Company that you couldn't make a revision of any order because it had been shipped, anything of that kind that you remember?

A. I don't recall now if you are speaking of the order that I received December 2, 1913.

Q. That is the one I have reference to.

A. Then there was no letter from the Badders Company in reference to that order except that letter I received from him in answer to mine of the sixth.

Q. You don't recall any advices in relation to it?

A. Do not recall, no sir.

Q. Understood you to say that the envelope to this letter Exhibit No. 79 was opened by you?

A. Yes sir.

Q. Personally?

A. Yes sir.

Q. Mr. Griffith did you testify before the Grand Jury?

A. Yes sir; that is the Grand Jury at Topeka you mean?

Q. Yes, in connection with this case?

A. Yes sir.

Q. I will ask you to state if in your testimony to the Grand Jury you said anything about the loss of this envelope?

788 Mr. Robertson: That is objected to as not cross examination.

The Court: Sustained.

Mr. Hite: Except.

Q. Your Honor, Mr. Griffith lives near by here and we would like to not close our cross examination finally but look for a letter which we think Mr. Griffith does not remember and to ask him that one question about that letter as soon as we can find it.

The Court: If you don't find it do you want him back here?

Mr. Hite: No sir, of course not.

The Court: And if you do find it you may call him by telephone; so you need not come back here unless you are told to.

Mr. Hite: That is all Mr. Griffith so far as I am concerned.

(Witness excused.)

Mr. Robertson: I desire to ask counsel if they agree that the M. C. Lilly & Company is a corporation duly organized and incorpo-

rated under the laws of the state of Ohio at Columbus, Ohio, as alleged in the indictment.

The Court: That is as to the tenth count.

Mr. Robertson: Tenth count, Your Honor.

Mr. Hite: Yes, the defendant admits that the M. C. Lilly & Company was the corporation as charged in the indictment.

The Court: Very well.

Mr. Hite: This is the tenth count did you say Mr. Robertson?

Mr. Robertson: Yes, the tenth count.

Mr. Robertson: Mr. Lawson, the witness called does not answer. Shall we proceed with the next count.

The Court: Yes.

Miss MYRTLE COHEN, called as a witness on behalf of the plaintiff, having been first duly sworn, testifies, as follows:

Direct examination.

Questions by Mr. Robertson:

Mr. Robertson: I ask counsel if it is admitted that the Hartman Trunk Company is and was a corporation duly organized and incorporated under the laws of the state of Wisconsin, and maintaining an office and place of business in the city of Chicago, Illinois, as alleged and charged in the indictment.

Mr. Harkless: This is the eleventh count.

Mr. Robertson: The eleventh count.

The Court: What does counsel say; is it admitted?

Mr. Hite: Just a moment, Your Honor, to look this matter up and I think I can make that admission also. The defendant admits that the Hartman Trunk Company was a corporation as charged in the indictment.

The Court: Very well.

Mr. Robertson:

Q. What is your name?

A. Myrtle Cohen.

Q. Where do you reside Miss Cohen?

A. Chicago.

Q. What is your business?

A. Stenographer and sales lady.

Q. With what firm are you associated?

A. The Hartman Trunk Company.

Q. How long have you been so associated with the Hartman Trunk Company?

A. Going on five years.

Q. I hand you a paper marked and referred to as exhibit No. 81 and ask you if you have seen that before?

A. Yes sir.

Q. State if you know whether that was received by the Hartman Trunk Company through the United States mail?

A. It was.

Mr. Hite: We ask the witness be permitted to testify as to how it was received.

The Court: Did you receive it?

A. I opened the mail.

Q. Did you open that letter?

A. I open every letter that comes in.

Q. Did you open that letter?

A. Yes sir.

Q. How did you get hold of it?

790 A. The mail man hands me all mail.

Q. The letter carrier delivered to you the mail and this letter was delivered to you in the usual way?

A. Yes sir.

Mr. Robertson:

Q. Was it in an envelope?

A. Yes sir.

Q. What became of the envelope?

A. We always throw the envelopes away.

Q. That was destroyed then was it?

A. Yes sir?

Mr. Robertson: Offer Exhibit No. 8, in evidence.

Mr. Hite: I would like to examine the witness a moment.

Questions by Mr. Hite:

Q. Miss Cohen, is it?

A. Yes sir.

Q. Understand you to say that all of the mail was delivered to you?

A. Yes.

Q. And that you get it direct from the letter carrier?

A. Yes sir.

Q. Have you any independent recollection of having received this particular letter; is there anything about this letter that enables you to say independently of your general rule that you got this particular letter from the letter carrier?

A. Well I receive every one of the letters and I know this letter was received by us because I recognize things on the letter to show that it was received by the mail.

Q. I have no doubt of that Miss Cohen; but my question is, have you any independent recollection, aside from your knowledge of your usual custom, of having gotten this particular letter from the letter carrier?

A. No sir, I haven't.

Q. Now, with reference to this envelope; have you any remembrance aside from your regular custom of destroying envelopes that come to the firm, or to your house, have you an independent recollection of having destroyed the envelope in which this letter  
791 came?

A. Well I open all the mail and after I am sure that everything is out of the envelope then I destroy it.



Q. I understand your custom perfectly well Miss Cohen, but I am asking you now whether you have any independent recollection of having opened this particular letter and destroyed that particular envelope?

A. No sir I have not.

Mr. Hite: If Your Honor please, the defendant objects to the admission in evidence of the Exhibit referred to by counsel, for the reasons heretofore given in connection with Exhibit No. 72 and in addition object to it for the reason that the testimony of this witness is insufficient as to its having been received through the mail.

The Court: That objection is overruled.

Mr. Hite: Except.

The Court: Read the letter.

Mr. Robertson: Reading Exhibit No. 81.

(A copy of Exhibit No. 81 is attached hereto and made a part hereof.)

(Witness excused.)

Mr. Robertson: While waiting for Mr. Lawson I will call Mr. Beck.

The Court: On what count?

Mr. Robertson: On general matters. We had expected to use Mr. Beck on count one but he is a witness on some other matters.

A. L. BECK, called as a witness on behalf of the plaintiff, having been first duly sworn, testifies, as follows:

Direct examination.

Questions by Mr. Robertson:

Q. What is your name?

A. A. L. Beck.

Q. Are you Alfred L. Beck?

A. Alfred L. Beck.

792 Q. Where do you live Mr. Beck?

A. New York.

Q. What is your business?

A. Manager of the office and credits of Spero Michael Co.

Q. Spero Michael Company?

A. Yes.

Q. Do you remember of meeting the defendant Badders in New York City?

A. Yes sir.

Q. When was that?

A. In November it was about around the 20th, either the 20th 21st, or 22d, I wouldn't say exactly which day.

Q. Of what year?

A. 1913.

Q. Did you have a conversation with him?

A. Yes sir.

Q. And what was it?

A. Why I don't recall the exact conversation, it was in the sample

room, I was in the sample room at the time when Mr. Badders and Mr. Boyd purchased goods from us; I won't say just what we spoke about.

Q. Do you know of your own knowledge that a bill of goods was purchased?

A. Yes sir.

Q. And do you know the amount thereof?

A. Approximately twenty two hundred dollars.

Q. And were the goods shipped?

A. No sir.

Q. Do you personally know the reason why they were not shipped.

Mr. Hite: Objected to as not material.

The Court: They didn't ship them that is sufficient.

Mr. Robertson:

Q. I will ask you if you can recall a conversation with Mr. Badders about a sale he was to have?

A. No sir.

793 Q. Do you recall anything further about the conversation you had there?

A. Why I recall either Mr. Badders or Mr. Boyd——

The Court: Don't say what without both were present; nothing Mr. Boyd said unless Mr. Badders was present.

A. Well they were both present at the time.

Mr. Hite: Even then I submit, that would not be any evidence against the defendant unless it was something he said.

The Court: Did you talk with Mr. Badders at all?

A. Yes sir.

The Court: What conversation had you with him, if there was any conversation about business?

A. Why he mentioned the fact that he expected to run a large sale and wanted these goods for that special sale.

Mr. Robertson:

Q. I hand you paper that has been referred to and marked as exhibit No. 71 and ask you if you ever saw that before?

A. Yes sir.

Q. Do you know who Spero Michael & Son were?

A. Yes sir.

Q. Who were they?

A. They were predecessors of Spero, Michael & Company.

Q. Did you represent them also in the same capacity that you are with that corporation?

A. Yes sir.

Q. That was a partnership, wasn't it?

A. Yes sir.

Mr. Robertson: We offer Exhibit No. 71 in evidence. The signature has been identified by another witness. But not for the purpose of establishing the count.

Mr. Hite: With the exception noted by counsel that it is not

offered for the purpose of establishing the mailing of that letter under the first count, defendant offers no objection.

The Court: Well the court will take care of that anyhow without any suggestion at all.

794 Mr. Robertson: Reading Exhibit No. 71.

(A copy of Exhibit No. 71 is attached hereto and made a part hereof.)

Q. Did you have any further correspondence than this with the Badders Company?

A. Yes I answered that letter.

Q. You have a copy of the answer with you?

A. I have it in my coat outside.

Q. Wish you would get it?

(Witness leaving the stand to get the letter. Witness returning with a paper or letter.)

Q. Do you have in your possession or under your control the original of that letter?

A. No sir.

Letter produced is marked Exhibit No. 96.

Q. Did you write the letter yourself of which this letter you have referred to is a copy?

A. I dictated it.

The Court: Did you sign it?

A. Yes sir.

Mr. Robertson: This copy, which has been marked Exhibit No. 96 is now offered in evidence.

Mr. Hite: Defendant objects to the introduction in evidence of the paper for the reason that it is secondary and therefore incompetent and incompetent also because it is not any declaration or admission made by any person authorized to make any on behalf of the defendant, and is not shown to have been written by *any* authority of his, but written by a third person disconnected from the defendant.

The Court: Let me look at the letter. Have you the letter or was it read of the 28th of February?

Mr. Robertson: That is the one I read.

The Court: And this——

Mr. Robertson: Is in answer to it.

The Court: You may read it sir.

Mr. Hite: Except.

Mr. Robertson, reading Exhibit No. 96.

795 (A copy of Exhibit No. 96 is attached hereto and made a part hereof.)

Q. I ask you whether in the course of your correspondence with the Badders Clothing Company you received paper which is handed to you marked Exhibit No. 97.

A. Yes sir.

Q. I will ask you whether you received that through the regular course of the United States mail?

A. Yes sir.

Q. You did?

A. Yes sir.

Q. Yourself?

A. Yes sir.

Mr. Robertson: Desire to offer Exhibit No. 97 in evidence.

The Court: Has that letter been identified?

Mr. Robertson: The signature has not been identified, but I think, Your Honor, in a case of this kind, the presumption of genuineness is raised.

The Court: No that will not raise any presumption; man might receive most anything through the United States mail; be necessary to show it was signed by the defendant.

Mr. Robertson: Be necessary to call some one to identify it.

The Court: Before you read that it must be shown to have been signed by this defendant.

Mr. Robertson: We will show it.

Q. At the time Mr. Badders was in New York I will ask you whether you had a conversation with him about the cancellation of an order for goods and if so what was that?

A. Yes sir, Mr. Badders and Mr. Boyd called the following day and Mr. Badders, I am quite sure, stated that he asked first whether we had shipped his merchandise. I told him we did not, and he requested we cancel a portion of the order consisting of blue serges, and I said we would.

Cross-examination.

Questions by Mr. Hite:

796 Q. Mr. Beck as I understand this matter Mr. Badders came to your establishment one day and made an order?

A. Yes sir.

Q. Did he buy from you direct?

A. I was in the sample room at the time.

Q. How do you know how much that order was?

A. I figured up the order myself.

Q. And that is the only way you know about it?

A. Well I have a copy of the order also.

Q. You have a copy of the order?

A. Yes sir, the original order.

Q. You gave Mr. Badders one?

A. A copy?

Q. Yes? And the next day Mr. Badders came back and cancelled a part of the order?

A. Yes sir.

Q. And you never shipped the goods?

A. Yes sir.

Q. That is all there was to the matter, is it not?

A. Yes sir.

(Witness excused.)

Mr. Robertson: If your Honor please, the government will be unable to make the necessary technical proof under the tenth count.

The Court: Well.

Mr. Robertson: Nevertheless, Your Honor, I wish to offer the letter involved in evidence, but not for the purpose of establishing the count. I offer Exhibit No. 8 in evidence.

The Court: That is the signature to it has been identified?

Mr. Robertson: It has Your Honor.

Mr. Hite: The defendant objects the same as heretofore stated as to Exhibit No. 72, so far as identification of signature is concerned, claiming the testimony of the witness identifying the signature was merely to the effect he thought it was signed by the defendant.

The Court: That is, it was not sufficient to authorize the reading of the letter in evidence. You may read it.

797 Mr. Hite: Except.

Mr. Robertson: Reading Exhibit No. 80.

(A copy of Exhibit No. 80 is attached hereto and made a part hereof.)

Mr. Robertson: The Government offers in evidence Exhibit No. 82, not for the purpose, however, of establishing the use of the mails as alleged in the twelfth count, but for the general purposes of the case.

The Court: The twelfth count the government does not offer any evidence to show it has gone through the mails.

Mr. Robertson: No, Your Honor.

Mr. Hite: This letter is objected to for the reasons heretofore given as to the identification of the signature, that the identification is not sufficient to permit the reading of the letter in evidence and that it is incompetent, irrelevant and immaterial.

The Court: The Court has ruled upon the identification of that signature a dozen times or more and the court adheres to its ruling.

Mr. Hite: Except.

Mr. Robertson: Reading Exhibit No. 82.

(A copy of Exhibit No. 82 is attached hereto and made a part hereof.)

MR. IRA BURDICK (recalled.)

Questions by Mr. Robertson:

Q. I call your attention Mr. Burdick to the paper marked Exhibit No. 97 and ask you to state whether that bears the signature of the defendant?

A. Looks like it to me.

Q. What do you say as to whether it is or not?

A. I said it looks like his signature to me, as near as I could swear to it without seeing him write it.

The Court: Have you seen him write?

A. Yes sir.

Q. What do you say now from all you know of his writing and what you have seen of his writing, as to whether that is or is not his signature?

798 not his signature?

A. I think it is.

Mr. Robertson: Offer Exhibit No. 97 in evidence.

Reading Exhibit No. 97.

(A copy of Exhibit No. 97 is attached hereto and made a part hereof.)

GEORGE A. CLARK, (recalled).

Questions by Mr. Robertson.

Direct examination:

Q. You are the same Mr. George A. Clark who has already testified in this case?

A. Yes sir.

Q. Are you the same Mr. Clark who was Secretary of State twice of the State of Kansas?

A. Yes sir.

Q. Mr. Clark in your previous testimony in this case there was something said about a demand on the defendant and a paper was produced which was marked Exhibit No. 1; have you that paper?

A. Yes sir.

Q. Have you any correction that you wish to make in your testimony relative to that paper?

A. I stated that this paper, the original of it——

Mr. Hite: Just a moment Mr. Clark; I do not see Your Honor where this is material.

The Court: If you want to correct any statement made in this case as a witness you may correct it.

Mr. Hite: I was not speaking to that point; Mr. Clark might explain anything he has said; I was thinking of the question of the demand.

The Court: He was testifying about that matter.

A. Your Honor, I was asked the question where the original of this paper was and I told them I thought it was filed with the bankruptcy proceedings; I was mistaken in that; I gave the original of it in person to Mr. Badders; it was a copy that was filed in the bankruptcy case, just the same as this is a copy.

799 Q. Do you have possession or control over the original of that?

A. No sir.

Mr. Robertson: We now offer Exhibit No. 1 in evidence.

The Court: Any objection to that?

Mr. Hite: We think it is immaterial is all.

The Court: He testified that he didn't have the original, and this *this* was a copy, and the original was given to Mr. Badders; I can see no harm done in that matter.

Mr. Hite: I don't think any harm; I don't see any materiality.

The Court: I think it may be material in view of his testimony given before.

Mr. Hite: Except.

Mr. Robertson: Reading Exhibit No. 1.

(A copy of Exhibit No. 1 is attached hereto and made a part hereof.)

Q. Did you deliver that to the defendant yourself?

A. Yes.

Q. When, Mr. Clark?

A. I think it was on the 3rd day of February, Feb. 3, 1914.

Q. What if anything has been turned over to you in response to that demand?

A. Nothing.

Q. Mr. Clark did there ever come into your possession, and did you ever see any of the slips that were given to the cashier concerning dividends, increased salaries, commissions and such items?

A. Never had any of them.

Q. Never did see such things?

A. Never saw them.

Q. Have you in your possession or under your control any book or record of any sort showing sales of goods from the Badders Company to Fred Voiland or to David J. August or the August Clothing Company or to the Mills Dry Goods Company of Topeka?

A. Nothing.

Q. Have you ever received or have you ever seen any books or memoranda of any sort, any record of those transactions?

800 A. No sir.

Q. Have you ever seen or do you have in your possession any papers or any records of any sort showing anything about the shipping out of merchandise out of the Badders Clothing Company business in December 1913 or any other time?

Mr. Hite: Your Honor—

The Court: I think his answer has been as complete as you need to have, and as to whether these goods were shipped out, or saw any memoranda of it, he says he has seen no memoranda.

Mr. Hite: Counsel for the defendant has supposed these questions were preliminary to some other matter, and for that reason have not objected to them; we now object to the examination of this witness and the statement he has no data in his possession, because of the fact there has been a loss of these papers and the books that did come into his hands, and we have no means of establishing the contrary of the statement made by the witness.

The Court: Let me ask you Mr. Clark.

Q. After all the books and papers that you did obtain, and which you testified here before that you packed into boxes, did you examine those papers and in the examination made by you of those papers did you discover any of the papers that counsel asked you about here?

A. None of them.

Q. Did you make a thorough examination at that time?

A. I thought I made a very thorough examination.

Mr. Robertson:

Q. Mr. Clark, after you became receiver did you take an inventory of the property of the Badders Clothing Company?

A. Yes sir.

Q. I will ask you whether you attended to that personally yourself?

A. Yes sir, I was in personal charge of it.

Q. Have you personal knowledge and do you know of the whole-sale cost value of that property which you found there as receiver?

A. Yes sir.

Mr. Hite: I would like to have that question read.

801 Question read.

Mr. Hite: Is that asking for his personal knowledge of it?

Mr. Robertson: Yes.

Mr. Hite: We don't think the witness is qualified.

The Court: How do you ascertain that?

A. From the cost book that had been used previous.

The Court: I do not think you need prosecute that inquiry any further.

Mr. Robertson: The object, is simply, Your Honor, to show how much he found there of property.

The Court: You may ask whether he did find that, and whether he made an inventory, and if it was a correct statement of all the assets he found there.

Mr. Robertson:

Q. Well, did you make an inventory?

A. Yes.

The Court: Did you inventory all the assets that were there?

A. Yes sir.

Mr. Robertson:

Q. Do you know what the total of that inventory was?

A. Yes sir.

Q. What was it?

Mr. Hite: Object to that as hearsay, not binding upon this defendant as to what Mr. Clark's inventory showed; as I understand we are seeking the fact of what he found there, not what his inventory was; it is incompetent for that reason.

The Court: Do you know of your own knowledge, except from the papers you found there, what the value—you put a value on this at the time you made inventory?

A. Just from the cost marks the I found there.

The Court: That is not competent in my judgment.

Mr. Robertson:

Q. Did you later sell the property which you found there as receiver?

A. Yes sir.

Q. Sold under orders of the court?

A. Yes sir.

802 Mr. Hite: If Your Honor please, it does not matter under what order it was sold; we object to that; if it was sold, that



is the question we are getting at, as I understand it, and I object to it because it is immaterial.

The Court: I think it is competent, if — get at it by proper testimony, to prove what assets was there and what it brought at public sale openly made.

Mr. Hite: What he asks was whether it was sold under order of court.

The Court: Don't make any difference how it was sold. You might ask him if it was sold at public auction to the highest bidder.

Mr. Robertson: Did you sell the property of the Badders Company at public auction to the highest bidder?

A. Yes sir.

Q. When?

A. Think it was on the 20th of April.

Q. Of what year?

A. 1914.

Q. What did you get for it?

A. Sixteen thousand dollars.

Q. On the day you took charge as receiver did you make any inquiry of Mr. Badders about the fourteen cases of goods that had been brought in?

A. I asked Mr. Badders if he had been receiving any goods lately.

Q. What was his response?

A. In the past three or four days.

Q. What was his response?

A. He said no.

Cross-examination.

Questions by Mr. Hite:

Mr. Hite: Before proceeding with the cross examination, Your Honor, we move to strike out the demand that was offered in evidence here, on the ground it is a mere self-serving declaration and for that reason was not proper to be admitted in evidence.

803 The Court: I do not know what you mean exactly by self serving declaration.

Mr. Hite: I mean it would only be a declaration that would serve the witness and not something that could possibly bind the defendant; the fact of the demand would be one thing, and the reading that instrument as though those books were in defendant's possession—we want to remove any impression of that sort.

The Court: That can be shown by you, they were not in his possession and couldn't comply with the order. Overruled.

Mr. Hite: Except.

Q. Mr. Clark did you have any information personally with reference to the Badders Clothing Company matters before you went there on January 30, 1914?

A. Nothing at all.

Q. Did you know what books or papers or accounts that company had before you went there?

A. No sir.

Q. Now you didn't know at the time you made this demand on Mr. Badders that there were any such books as you describe in that demand in existence did you?

A. No sir.

Q. Now you say you made a thorough examination of these papers that were afterwards boxed up by you; how many hours, or how much time did you spend in the course of that examination?

A. I don't know how much time I spent. Kept no record of it.

Q. There was about a wagon load of 'hat, wasn't there?

A. More than that.

Q. Two wagon loads?

A. There was pretty near three wagon loads of these little Hasty Messenger wagons, papers.

Q. Many of those papers were tied up in bundles were they not Mr. Clark?

A. Only two bundles that I remember being tied.

Q. Your memory about those papers is not very good, is it Mr. Clark?

804 A. I hope so Mr. Hite.

Q. When you testified about these papers before you said that there was a package in those cases about that thick of letters, did you not; do you recall that?

A. Yes sir, I said I thought those were in that.

Q. Was it a fact? The package you spoke of there was afterwards found in the vault of your attorney?

A. Yes sir.

The Court: That was brought out the other day.

Mr. Hite: Beg your pardon, this part has not been brought out.

Q. And that package which was found in your attorney's vault contained a lot of letters, did it not?

A. Practically all letters.

Q. Addressed to the Badders Clothing Company, and carbon copies of letter- written by the Badders Clothing Company, is that not so?

A. Yes sir.

Q. Do you know what was in that package?

A. The package of letters?

Q. Yes sir?

A. Some of them.

Q. Did you examine them all?

A. At different times I went over them frequently.

Q. And you are prepared now to say what was the nature of the letters that were in that package?

A. I wouldn't say that.

Q. Did you examine any other letters or letter files of the Clothing Company?

A. I went through every letter file I could find there Mr. Hite.

Q. And read all the letters?

A. Glanced over them.

Q. So that you are able to testify as to the contents of those letters, are you?

A. Don't think I could.

Q. Now you say you made an inventory of all the assets  
805 that came into your possession?

A. Yes sir.

Q. When did you make that inventory?

A. Immediately after taking charge.

Q. You left some things out of that inventory, didn't you Mr. Clark?

A. Not that I know of.

Q. Didn't you leave one hundred and nineteen dollars out of it that you afterwards found in the vault?

A. The inventory was taken prior to the time that money was found.

Q. So far as you know the money was in the vault all the time?

A. Yes sir.

Q. But you didn't find it, did you?

A. Didn't find it.

Q. Now that money was in a bag of some kind in the vault, behind a lot of books and papers, wasn't it?

A. Yes.

Q. Did you ever take out those books and papers and look at them before you found that money?

A. Not those.

Q. Mr. Clark did you take any of the books and papers out of the vault before you found that money and look at them?

A. I took all the books in there that I found, all those books I took—

Q. But you didn't go through and make a thorough examination of that vault to see what books and papers were there did you?

A. I made a pretty thorough examination.

Q. Well why didn't you find that money?

A. That was in behind a whole lot of bound freight bills and expense bills.

The Court: I know that was gone over here about that one hundred and nineteen dollars.

Mr. Hite: But it is appropriate here in view of the testimony that he made a thorough examination of these papers.

The Court: You heard his testimony in reference to that one hundred and nineteen dollars; he didn't know it was there,  
806 and it was there behind some old papers, and he got it; you got that out the other day.

Mr. Hite: But I think we have a right to examine the witness for the mere purpose, at least, of showing that Mr. Clark may be mistaken about the extent of his examination.

The Court: Very well.

Q. Now Mr. Clark these papers that were packed in these packing cases were selected by Mr. Badders were they not?

A. Well I can't say they were selected by Mr. Badders.

Q. Well, I understood you on a former occasion to testify that at the request of D. R. Hite, attorney for Mr. Badders, that certain of these papers were to be preserved for future use; did you not so testify?

A. Mr. Badders was present when the selection was made.

Q. Is it not a fact Mr. Clark, that you testified on a previous occasion in this case that the selection of what was to be preserved was left to Mr. Badders?

A. When I would pick up anything, I would refer to it, I would simply say, "George, want this saved?" And if he said yes we took it along.

Q. So Mr. Badders was present during the time you were picking out these things that were to go into the packing cases?

A. Yes sir.

Q. And whatever he asked to be put in there you put in Mr. Clark?

A. Yes sir.

Q. How long were you and Mr. Badders at this work of selecting out these papers?

A. Oh I expect we were there two or three hours, I don't remember, I couldn't say definitely.

Q. What was done with the papers after they were selected as to taking them away from this place?

A. Hauled down to my office.

Q. In a wagon?

A. Yes sir.

Q. They weren't packed up but put loosely in a wagon, I mean in bundles, Mr. Clark?

A. There wasn't anything loose in it; they were in boxes or tied up.

Q. And they were taken down to your office and there you nailed them up in these packing cases?

A. Yes sir.

Q. Now you say that was some time in April, 1914?

A. It was either the afternoon of the day of the sale or the following day as I remember it.

Q. Now during the time Mr. Badders and you were selecting out these papers did you look at any of them?

A. I don't recall that I did Mr. Hite.

Q. When did you look at any of them Mr. Clark?

A. From the day I took charge of the store until the sale was made I was going over it at different times, seeing if I could find any data that would be necessary.

Q. You testified previously in another case about this same matter, did you not, about the matter of what papers came into your possession?

A. I think in the bankruptcy case.

Q. Did you not testify there that there was a great big pile of sale slips down in the basement that you had never sorted out?

A. No sir.

Q. You didn't testify to that?

A. Don't think I did.

The Court: I think these matters were well gone into the other day and the testimony of this witness was very thoroughly gone into.

Mr. Hite: I am nearly through Your Honor.

The Court: Well, examine him.

Mr. Hite:

Q. Mr. Clark, I will ask you if you weren't asked this question: "Now you say you found these papers in the south basement; did you find them there personally? A. I was told they were there and went down and got them." Did you so testify?

A. I think that was my language Mr. Hite.

808 Q. Now with reference to this inventory were you asked as to whether you personally did any of the work of making it up? Were you asked about that?

A. I think so.

Q. Did you not testify on that occasion you had had nothing to do with the actual work of making it up?

A. I don't think I did that.

Q. Mr. Clark, these cases containing these books and papers that were selected by you and Mr. Badders have not been found have they?

A. Not to my knowledge.

Redirect examination.

Questions by Mr. Robertson:

Q. Have you been making an effort to find them?

The Court: Answer that question; you need not go into that because that will open the way to another examination.

Mr. Robertson: There is one other matter I want to inquire about.

Q. This package of papers, counsel has referred to, a package of papers that your attorney discovered and brought here to court; who was your attorney?

A. A. M. Harvey.

Q. Just tell about that package of papers and how that came about?

A. That is another correction that I want to make; that is the package of letters that I referred to that was about that thick that I thought were in these two cases that I boxed up; but instead of putting them in there, I thought they were of sufficient importance, so I turned them over to my attorney and he put them in his safe.

Recross-examination:

Q. Mr. Clark, you mean Mr. Thomas took them down to your attorney?

A. Under my instructions, yes sir.

(Witness excused.)

809 C. C. COULSON (recalled).

Questions by Mr. Robertson:

Q. You have been a merchant for many years Mr. Coulson?

A. I have been in the mercantile business and bookkeeper.

Q. And was entirely familiar with all the stock of the Badders Clothing Company, were you not?

A. Yes sir.

Q. And assisted in making the invoice for the receiver Clark?

A. Yes sir.

Q. From your experience do you know, and have you a judgment of the wholesale cost value of that stock of goods at the time the receiver took charge of the business; answer that with yes or no?

A. Yes sir.

The Court: What is your answer?

Mr. Hite: Objected to as incompetent, irrelevant and immaterial.

The Court: Answer.

Mr. Hite: Except.

A. Twelve or fifteen thousand dollars, somewhere along there.

Q. What is that?

A. Twelve or fifteen thousand dollars, somewhere along there.

Q. Now I will ask you whether in that estimate you include the seven thousand dollars' worth of merchandise that came back in the cases?

A. No sir.

Q. With those added, what in your judgment was the total value of the property and assets there of the Badders Clothing Company?

A. I think the merchandise is close to twenty three thousand dollars; that is what I would think about it.

Cross-examination.

Questions by Mr. Hite:

Q. Mr. Coulson, you know who bought that merchandise when sold by the receiver?

A. From hearsay only, I was not there.

10 Q. Do you know who the Palace Clothing People are in Topeka?

A. Yes sir.

Q. Were they competitors of the Badders Clothing Company?

A. Yes sir.

Q. A lot of these clothes were winter clothing were they not?

A. Why some of them were.

Mr. Robertson: Objected to as not cross examination.

The Court: He asked about the value, whether winter, summer fall clothing, as one stock of goods on hand, what they were worth, what valued at, and what in his judgment those things were worth at the time the receiver was appointed.

Mr. Hite:

Q. Mr. Coulson, have you ever had any experience in buying and selling, or buying goods at bankrupt sales?

A. No sir.

Q. Do you know anything about the average price that is paid on the actual value of stuff sold at a bankrupt sale?

A. No sir.

Mr. Robertson: Objected to as not cross examination.

The Court: I think that is true. Some things at bankrupt sale bring more than a regular sale; let him state if he knows of any bankrupt sales, and whether the price received at the bankrupt sale was greater or less than the usual price.

Mr. Hite:

Q. What do you say?

A. It is usually less than the cost of goods, yes sir.

Q. About how much less?

A. Fluctuating.

Q. Isn't it a fact Mr. Coulson it is rarely as high as fifty cents on the dollar?

A. Yes sir, it is usually that high or higher.

Q. You say it is usually that high or higher?

A. Yes sir.

Q. Do you know of any clothing house in Topeka that buys bankrupt stocks?

Mr. Robertson: Objected to as immaterial.

811 The Court: Sustained.

Mr. Hite:

Q. Do you know of any stock of clothing composed in part, a fair share of it, winter clothing, sold in April, or the summer, as high as fifty cents on the dollar of its worth?

A. I don't recall any; I don't know.

(Witness excused.)

Mr. Robertson: If we could take a four or five minute recess think the Government might be able to announce.

(3:35, recess of five minutes.)

(3:55 P. M.)

Mr. Robertson: The Government rests, Your Honor.

The Court: The Government rests here.

Mr. Robertson: Yes Your Honor.

The Court: In view of the requests and representations made to me by counsel for the defendant, and I desire to be as accommodating as I can under the circumstances, and with their promise that the case will probably be shortened by the temporary delays we are going to make now, I have consented, at their request, and with the approval of the United States Attorney, that the case will not be proceeded with in court until two o'clock tomorrow, and you gen-

lemen of the jury can appreciate this situation that we are all in. A good many of you are a good ways from home, and you are not quite as much disturbed, possibly, as those who are close at home; but the Court is a good long ways from home, and we are all as anxious as we can be to get back as soon as we discharge the important duties that rest upon us all. No man would seek to shorten anything to the detriment of either the government, on the one side, or the defendant upon the other side. I hope, and from the assurance that is given me, to close this case the present week. I am glad that you are all so comfortably fixed, under these circumstances. I have been down to your hotel a few times myself since you have been there, and I know that unless you are particularly fastidious you ought to be very well satisfied with your lot. The corn bread and the apple butter, and the buttermilk down there is very attractive to me, and I have no doubt has been very comforting to you. We will try and go on in the discharge of the duties that we respectively owe, and get through with it. I am always sorry to see any one inconvenienced, but under these circumstances that I have detailed, why we must all submit to some inconvenience. The satisfactory part of it, as far as you are concerned, is that you cannot be required to serve again in the Federal Court on a jury within a year. I make this announcement to you gentlemen, as the court wants you to know just exactly the reason why these delays occur, and for what purpose they occur, as you are a part of the court and a part of this trial, and you should be advised promptly in reference to everything that it is right that you should be advised about. The court will stand at recess. You may adjourn court until two o'clock tomorrow afternoon.

THURSDAY, January 28th—two o'clock p. m.

The Court: Are you ready to proceed with this case.

Mr. Harkless: If the Court please, the defendant desires to file and now submit to the court a *deparate* demurrer to the evidence as each and all of the counts in the indictment, and submits them to the court for its consideration.

The Court: Let the demurrers be overruled.

Mr. Hite: Defendant excepts.

Mr. Hite: Defendant is ready, Your Honor, to proceed with its case but the United States attorney is not present yet.

The Court: Call the United States Attorney in please.

Thereupon, the defendant, produced and offered evidence, as follows, to wit:

Mr. Hite: We call Mr. Justice Mason.

HENRY MASON, called as a witness on behalf of the defendant, having been first duly sworn, testifies, as follows:



813 Direct examination.

Questions by Mr. Hite:

Q. Where do you reside?

A. Garden City.

Mr. Robertson: Just a moment, Your Honor, if there be any witnesses, outside of members of the bar, like to have them remain outside. Mr. MacLennan, we will not object to his remaining in.

The Court: Proceed.

Questions by Mr. Hite:

Q. What if any office do you hold under the State of Kansas?

A. Member of the Supreme Court.

Q. How long have you been a justice of the Supreme Court?

A. Twelve years.

Q. Were you lately elected to that office Justice Mason?

A. I was.

Q. Does your service upon the Supreme Court require your residence for a part of the time in Topeka?

A. Practically all the time.

Q. Are you acquainted with the defendant George S. Badders?

A. Yes.

Q. How long have you known him?

A. Ten years.

Q. Are you acquainted with the reputation of the defendant George S. Badders in the community where he lives in Topeka, Kansas, for honesty, integrity and uprightness prior to say Christmas of 1913?

A. I think I am, yes.

Q. State what the reputation of the defendant was in that community for honesty, integrity and uprightness prior to Christmas, 1913?

A. I will say it was good.

Cross-examination.

Questions by Mr. Robertson:

Q. Judge had you ever heard it discussed by anybody prior to that time?

A. Yes.

814 Q. Were you about the state house during the 1911 session of the legislature of the State of Kansas?

A. Yes sir.

Q. Did you hear about the corporation franchise episode that Mr. Badders got into there in connection with the Kansas Senate and Secretary of State?

A. I heard some talk of an affair of that kind.

Q. Are you familiar with the details of it?

A. No.

Q. Did you know and understand that that was an effort on the

part of Mr. Badders to obtain money by false pretenses from certain corporations in the state of Kansas?

Mr. Hite: Object to that as incompetent, immaterial and irrelevant, and improper.

The Court: Sustained.

Mr. Robertson: Is it Your Honor's idea that instances of that kind, occurring prior to Christmas, 1913, I cannot go into?

The Court: If he had heard that discussed; this witness is called to state as to what was the standing of this defendant prior to a certain date; he has stated that; now you may call his attention to any conversation he had with anybody about it, and in reference to anything, if there was such.

Mr. Robertson:

Q. Did you have a conversation with anybody about that matter?

Mr. Harkless: About what matter?

Mr. Robertson: The one we have been discussing.

A. I heard general talk connected with it, not in any detail. I rather think there was some publication connected with it, I am not sure about that.

Q. Do you remember who you talked with?

A. No I do not, as to that, not with any one that was specially interested, merely current talk.

Q. Did you get into the details of the thing, do you recall?

A. No.

Q. Where is your home, Judge?

A. Garden City is my legal residence.

15 Q. That is in the southwest portion of Kansas?

A. Yes sir; during the twelve years that I have been on the bench I have been practically a resident of Topeka.

Mr. Hite: You say you have been practically a resident of Topeka?

A. Yes.

The Court: Ask any other question you have got Mr. District Attorney that I may proceed with this case.

Mr. Robertson:

Q. Can't you recall who you discussed that matter with?

A. This particular matter?

Q. Yes?

A. No I can't, I hardly think I ever really discussed it with anybody, except as I would hear casual remarks made concerning it.

Q. What did you hear about that?

Mr. Hite: We don't think that is competent, Your Honor.

The Court: Objection sustained.

Q. Did you hear anything about a certain paying claim episode growing out of Mr. Badders' activities in connection with the legislature that year?

A. If so I do not identify it.

Q. Particularly in reference to Senator S. M. Brewster, who is now attorney general of the State of Kansas, and Captain Chas. Hamilton, both of whom were then members of the State Senate of Kansas?

A. I do not believe what you say—it does not suggest anything of that kind to me.

Q. Do you know that the defendant was a lobbyist there at the session of the legislature?

A. I understand that.

Mr. Hite: We do not think that is proper Your Honor, asking if he was a lobbyist there.

The Court: I don't know what a lobbyist is in Kansas; I have some knowledge of them in Missouri, but not in Kansas; may be the most reputable thing some places and most un reputable thing elsewhere.

816 Mr. Harkless: What is Your Honor's ruling?

The Court: I don't think it is proper to ask him about that.

(Witness excused.)

Mr. JUSTICE WEST, called as a witness on behalf of the defendant having been first duly sworn, testifies, as follows:

Direct examination.

Questions by Mr. Hite:

Q. Where do you reside?

A. Topeka, Kansas.

Q. How long have you resided there?

A. About fourteen years.

Q. What office, if any, do you hold under the State of Kansas?

A. Justice of the Supreme Court.

Q. How long have you been a justice of the Supreme Court, Justice West?

A. Four years.

Q. Are you acquainted with the defendant George S. Badders?

A. Yes sir.

Q. How long have you known him?

A. About ten years I think.

Q. Are you acquainted with the reputation of the defendant George S. Badders in the community where he lived in Topeka, during the period you have known him and prior to Christmas of 1913?

A. Yes sir I think so.

Q. I am speaking now Justice West of his reputation for honesty, integrity and good character; is your answer to that question yes?

A. Yes sir.

Mr. Robertson: What period is fixed?

Mr. Hite: During the period of his acquaintance with the defendant and prior to Christmas of 1913.

Q. Justice West state to the jury what the reputation of the defendant George S. Badders was for honesty, integrity and good conduct and character during the period I have mentioned in that community?

817 A. Oh I would say it was good.

Cross-examination.

Questions by Mr. Robertson:

Q. Judge were you in any manner personally familiar with the business affairs of the defendant at that time?

A. Why when I went into the firm of Rossington, Smith and West Mr. Badders was in the office and was there during the time I was in that firm.

Q. You know there was a Badders Clothing Company operating a store?

A. I was as familiar as I would be with any other merchant I was acquainted with, that was all.

Q. What I want to learn is, whether you knew anything of the workings or the details of his business matters?

A. Substantially no.

Mr. Hite: Objected to as incompetent.

The Court: General reputation is what we are inquiring after, and the general reputation we will hold to.

Q. I hand you three papers that have been marked Exhibits No. 98, 99 and 100, respectively, and ask you if you have seen those before?

A. Yes sir.

Q. You receive those through the mail?

A. Yes sir.

Q. You are familiar with Mr. Badders' signature?

A. Why fairly so.

Q. Is that his signature?

A. I think it is, I wouldn't be positive about it, but the letter was received from him.

Q. You at one time held a share of stock in the Badders Clothing Company?

A. Yes sir.

Q. And it was in connection with that matter you received this exhibit?

A. Yes sir.

818 Mr. Robertson: We would like to offer this in evidence.

Mr. Hite: It is objected to as incompetent, and not proper cross examination.

The Court: I do not think it grows out of the examination in chief and the objection is sustained.

Q. Did you hear the testimony of Judge Mason just now?

A. Yes sir.

Q. Have you heard anything of those matters I asked him about?

A. Why I heard something about his connection with a bill that

winter to get the city to pay it back for some paving around the state house square; this other matter I didn't hear anything about, but since this trouble began I heard a little about it.

Q. Do you recall having a conversation with anybody about it?

A. About the paving business?

Q. Either one?

A. I recall one conversation I had.

Q. Which matter?

A. About the paving.

Q. Who with?

A. J. Will Kelly, Secretary of the Commercial Club.

Q. What was that?

A. Why one of the Topeka papers had said something in criticism of Mr. Badders, and Mr. Kelly came by that morning and I spoke about it and he immediately took up Mr. Badders' side of it, and that was all there was of it.

Q. You never talked with Senator, now Attorney General Brewster, about it?

A. I don't believe he ever mentioned that to me.

Q. Or to Captain Clad Hamilton?

A. I don't believe I ever talked to Captain Hamilton about it.

Q. Or with myself, who was also a member of the Senate at that time?

A. Not that I remember of.

(Witness excused.)

819 T. A. BORMAN, called as a witness on behalf of the defendant, having been first duly sworn, testifies, as follows:

Direct examination.

Questions by Mr. Hite:

Q. Mr. Borman, where do you live?

A. Topeka, Kansas.

Q. How long have you lived there?

A. Since 1901.

Q. What is your occupation?

A. Editor of the Kansas Farmer.

Q. How long have you been editor of the Kansas Farmer?

A. About four years.

Q. What occupation were you in prior to that time?

A. President of the Continental Creamery.

Q. President of the Continental Creamery Company?

A. Yes sir.

Q. Do you know the defendant George S. Badders?

A. I do.

Q. How long have you known him Mr. Borman?

A. Since about 1909 or 1910.

Q. During that period that you have known the defendant, and prior to Christmas 1913, state if you know what his reputation was

in the community where he lived in Topeka for honesty, integrity and uprightness of character.

The Court: State whether you are acquainted with it first; whether you know what his general reputation was among the neighbors and acquaintances and people with whom he associated for honesty, integrity and uprightness prior to Christmas 1913?

A. I think I know that.

Q. You may state?

A. And that his reputation was good.

Cross-examination.

Questions by Mr. Robertson:

Q. Are you an active business man in Topeka Mr. Borman?

A. Yes sir.

820 Q. And been a pretty active business man for some years?

A. Yes sir.

Q. Being such active business man do you come in contact with the general gossip of the community or anything of that sort?

A. Well, I think not, with reference to gossip of the community; I am too busy to pay much attention to that.

Q. That is what I thought; now let me understand you, whether you intend to have anything to say upon this subject that applies to any time subsequent to Christmas 1913.

Mr. Hite: Object to that.

The Court: The conversation is limited to the time when he asks him, up to Christmas 1913.

Mr. Robertson: Did you hear anything of those matters that I have just asked Judge West and Judge Mason about?

A. Nothing whatsoever, except to hear that Mr. Badders was——

The Court: Go on.

Mr. Hite: I do not care Your Honor to object to that; proceed Mr. Borman, the court has permitted you to.

A. Interested in the collection of the paving bill from the state.

Q. That is as far as you heard anything about it?

A. Absolutely yes sir.

Q. Do you remember who you talked to about it?

A. No sir.

(Witness excused.)

Reverend WARD, called as a witness on behalf of the defendant, having been first duly sworn, testifies, as follows:

Direct examination.

Questions by Mr. Hite:

Q. Where do you reside Mr. Ward?

A. Topeka, Kansas.

Q. How long have you resided there?

A. Little over ten years.

Q. And in what are you engaged in Topeka, Kansas?

821 A. I am Pastor of the Westminster Presbyterian Church.

Q. How long have you occupied that position?

A. Little over ten years.

Q. Do you know the defendant George S. Badders?

A. Yes sir.

Q. How long have you known him?

A. Ever since I have been in Topeka.

Q. Is he a member of your church?

A. Yes sir.

Q. Mr. Ward state if you are acquainted with the reputation, among his neighbors and associates in the city of Topeka, of the defendant, for honesty, integrity and uprightness of character during the period you have known him and prior to Christmas of 1913; are you acquainted with that reputation?

A. Yes, I have known Mr. Badders.

Q. I didn't ask you about that.

The Court: Just state if acquainted with his reputation prior to that date, in Topeka?

A. Yes.

Mr. Hite:

Q. Please state Mr. Ward to the jury what that reputation was as to honesty, integrity and uprightness of character among his associates and neighbors where he lives, during that period?

A. It was good.

(Witness excused.)

Mr. Hite: If Your Honor please, these gentlemen have come for this purpose, and have been called out of their order, and would like to be excused.

The Court: I have no objection unless the District Attorney has.

Mr. Robertson: I have none.

The Court: They will be excused.

FRANK P. MACLENNAN, called as a witness on behalf of the defendant, having been first duly sworn, testifies, as follows:

822 Questions by Mr. Hite:

Q. Where do you reside Mr. MacLennan?

A. Topeka, Kansas.

Q. In January 1914 was the Badders Clothing Company indebted to you in any way?

A. Yes sir.

Q. You are the editor and owner of the Topeka State Journal, are you not?

A. Yes sir.

Q. A daily newspaper published in that city?

A. Yes sir.

Q. State to the jury how much the Clothing Company owed you at the time mentioned?

A. January 1914?

Q. Yes?

A. About five hundred dollars.

Q. Was that paid?

A. Most of it.

Q. Who paid it?

A. George Badders.

Q. How much did he pay you?

A. He paid about four hundred and sixty dollars.

Q. You don't recall the exact amount Mr. MacLennan?

A. Well I can tell you the exact amount I think.

Q. I would be glad if you would do so?

A. \$460.90.

Q. And that was on account of indebtedness due you from the Badders Clothing Company?

A. Yes sir.

#### Cross-examination.

##### Questions by Mr. Robertson:

Q. How long have you lived in Topeka, Mr. MacLennan?

A. Nearly thirty years.

Q. And how long have you known the defendant Badders?

A. Ten or more years.

Q. Ten or more years; and when Mr. Badders made this payment to you did he have any conversation with you?

823 A. He did.

Q. What did he say?

A. He said that he wanted to settle up his account, and he wanted me to give him a receipt as the amount having been paid by him personally.

Q. Personally himself?

A. And not as president of the company.

Q. Recall anything further he said?

A. I think that was the substantial part of the conversation.

Q. Do you remember him saying anything to you on this subject, that he was taking care of his Topeka friends, or words to that effect?

A. No sir I do not.

#### Redirect examination.

##### Questions by Mr. Hite:

Q. Mr. MacLennan, as to this amount that you spoke of, will you be good enough to examine the paper I now hand you and state whether that will refresh your recollection as to the account, as well as the payment?

A. Yes sir.

Q. And with that paper in hand, what do you say now as to the amount of money that was paid you?



A. Well, I still say he paid the same amount, \$460.94, but there were some other claims that he had against us.

Q. And the amount actually liquidated by the transaction was right at five hundred dollars, was it not?

A. Yes sir.

Q. So, as I understand you Mr. MacLennan, you received the amount you stated in cash, but the balance was a set-off, the Clothing Company had against you?

A. Yes and a discount on the bill.

Q. So from those items it made up a total of five hundred dollars, is that right.

A. About that yes sir.

The Court: When was that indebtedness made?

A. It was created by advertising in the month of December 1913, and possibly part of it in November of the same year.

824 Q. Mr. MacLennan, just one other question; this set-off that was allowed was on account of purchases made by you from the Badders Clothing Company was it not?

A. And one or two other members of the office force.

Q. Of your office force?

A. Yes.

Q. Who had made purchases of the Badders Clothing Company, and that constituted a part of this set-off?

A. Yes sir.

(Witness excused.)

J. E. GRIEST, called as a witness on behalf of the defendant, having been first duly sworn, testifies as follows:

Direct examination.

Questions by Mr. Hite:

Q. Where do you live Mr. Griest?

A. Topeka, Kansas.

Q. What was your occupation in January 1914?

A. Business manager for the Daily Capital in Topeka.

Q. Is that a daily newspaper published in the city of Topeka?

A. Yes sir.

Q. Are you acquainted with the defendant George S. Badders?

A. Yes sir.

Q. In the month of January, 1914, did Mr. Badders pay you any money on account of any indebtedness due from the Badders Clothing Company to the Topeka Daily Capital?

A. I will have to look, I don't remember whether January or December. Yes sir, January 13th.

Q. How much did he pay you?

A. Six hundred dollars.

Q. What was that for?

A. Advertising.

Q. A bill due from the Clothing Company to the Capital for advertising?

A. Yes sir, Badders Clothing Company.

Q. For what period of time?

825 A. This account starts several months back; I brought sort of an abstract of the ledger with me; it was in settlement up to that time.

Q. Did it include amounts due from the Badders Clothing Company from time to time as a running account, was it not?

A. Yes.

Q. And this amount that you received at that time indicates—was a balance, was it Mr. Griest?

A. It was a settlement at that time.

Q. A settlement at that time?

A. Yes.

Q. And that paid the account of the Topeka Daily Capital in full, did it?

Mr. Robertson: Objected to as leading, in all of his questions Your Honor.

The Court: I will let him lead as far as that is concerned.

A. No it didn't pay it in full.

Q. How much balance did it leave?

A. For his settlement at that time we gave him a discount.

Q. Well, including the discount it satisfied the claim, did it not?

A. Yes, sir. That is, up to the first of January.

Q. I understand Mr. Griest the amount of cash you received was six hundred dollars, is that right?

A. Yes sir, that is right.

#### Cross-examination.

#### Questions by Mr. Robertson:

Q. You usually discount your bills, don't you?

A. No sir not usually.

Q. What if anything did Mr. Badders have to say about this?

A. He offered it for settlement and I had been after him hard for money for weeks and he offered it.

Q. Do you remember anything what he said to you about it?

A. He didn't say much to me about it, I was doing the talking.

Q. Do you remember a remark like this: That he was trying to fix these things up with his Topeka friends?

A. No, not with me.

Q. You folks had run the advertising for the sale he had there?

826 A. Yes, just the advertising he gave us right along.

(Witness excused.)

#### Mr. Robertson:

Q. How long have you lived in Topeka?

A. Nine years and five months.

Q. How long have you known the defendant?

A. About seven years.

Q. About seven years.

(Witness excused.)

MORTON ALBAUGH, called as a witness on behalf of the defendant, having been first duly sworn, testifies as follows:

Direct examination.

Questions by Mr. Hite:

Q. Mr. Albaugh, You are the clerk of the United States Court for the District of Kansas?

A. I am.

Q. You were such clerk in January of 1914?

A. I was.

Q. In that month was there any petition in bankruptcy filed in the matter of the Badders Clothing Company?

A. There was.

Q. Have you that paper that was then filed?

A. I have.

Q. And what date was it filed?

A. January 21, 1914, at eleven a. m.

Q. Will you permit me to have the paper Mr. Albaugh?

Mr. Hite: Defendant offers the paper in evidence.

Mr. Robertson: Objected to as immaterial.

The Court: Let him have the paper.

Mr. Hite: May I defer reading this, Your Honor, until I have put this paper in evidence and then Mr. Albaugh may be excused.

The Court: Yes.

827 Q. Mr. Albaugh, Have you in your possession and under your control a paper, an order of injunction issued at or about the same time by this court in the same matter?

A. I have.

Q. Have you that paper now?

A. I have.

Q. Please hand it to me. Mr. Albaugh, have you in your possession a petition filed in the matter of George S. Badders individually, in bankruptcy?

A. I have.

Q. You have it now in your hand?

A. I have.

Q. Please hand it to me.

A. Witness doing so.

Mr. Hite: I will offer these papers in evidence, but thought I would excuse Mr. Albaugh unless you want him.

The Court: Are you through with him on your examination.

Mr. Hite: Yes, Your Honor.

## Cross-examination.

Questions by Mr. Robertson:

Q. How long have you lived in Topeka Mr. Albaugh?

A. About thirteen years.

Q. Acquainted with the defendant Badders?

Mr. Hite: We think this is not germane to the matter.

Mr. Robertson: I want to find out whether he kn-ws defendant Badders and how long he has known him.

The Court: He says he has known him thirteen years.

Mr. Robertson:

Q. You say you have known the defendant thirteen years?

A. No, I have been in Topeka thirteen years.

Q. How long have you known the defendant?

Mr. Hite: Objected to as incompetent.

The Court: I don't think it is hardly proper. He was brought here to identify certain papers and he has done that; if there is anything in these papers, files, or anything of that sort you may examine him.

Mr. Robertson: Calling attention to this petition in case No. 1757, was that case been tried in this court.

Mr. Hite: Objected to as not proper cross examination.

The Court: Will I think not. Now as far as that bankruptcy proceeding is concerned, and the proceedings in reference to it, the court does not say anything here in the presence of the jury in reference to the matter, but I do not think any question arises except as to the competency of these papers, for any purpose. Objection sustained.

Mr. Hite: The defendant offers these papers referred to by the witness in evidence.

Mr. Robertson: Objected to as incompetent, irrelevant and immaterial.

The Court: Sustained.

Mr. Hite: Would Your Honor permit us to be heard on the subject, very briefly.

The Court: Yes.

Mr. Hite: Perhaps the jury would then better be excused for ten minutes.

The Court: Very well, let the jury be excused.

(Jury retires at 2:45 p. m.)

Mr. Hite: The purpose of the proof is to show, Your Honor, that after January 21st the Badders Clothing Company was placed in bankruptcy; that that proceeding amounted to an injunction; and that in that proceeding an injunction was issued directing this defendant not to disburse any funds; for the purpose of removing any impression that the jury might have growing out of the fact that the sum of the debts of the clothing company were not own—

The Court: I suppose that may be shown; and your statement was that bankruptcy proceedings were begun and an injunction was issued; of course, after the bankruptcy proceeding commenced, the court would direct the jury, if you so ask it, that this defendant could not be required to pay any debts in view of the injunction and the bankruptcy proceeding itself. Whatever dividends might be declared upon his assets would have to come through the trustees, after his trustee was elected, and that he would not have the right, after the bankruptcy proceedings had commenced, to pick out who was allowed to be paid and who would not be; it was a matter  
829 that stopped right there on January 21st.

Mr. Hite: There is nothing in the record thus far to establish a proceeding in bankruptcy was brought, and this is not introduced for any other purpose except to show that fact.

The Court: If that is all, I will allow it, but I had supposed from this inquiry of the clerk, this proceeding commenced on the 21st of the month, a petition filed on that day, and an injunction granted, I don't know why, but after the proceedings commenced and the petition was filed why the defendant himself could not dispose of any of his assets.

Mr. Hite: But, Your Honor, that fact of the beginning of the bankruptcy proceedings, and the issuing of the injunction and the beginning of the proceeding against Mr. Badders personally is not in the record.

The Court I will allow it to go into the record; I wanted to cut out all of this matter because we are not going into the bankruptcy matter; I understand there was one trial upon that question to a jury and the jury said he was a bankrupt, and that he had committed acts of bankruptcy and I am not going into that. My sole object was to cut out any possibility of going into it on the other side.

Mr. Hite: And if Your Honor please, we expect to offer this proof and limit it to these matters only.

The Court: I want to advise counsel on both sides, as far as this proceeding in bankruptcy is concerned, what happened at the trial, what evidence was introduced, what the judgment of the court was, is entirely foreign to this inquiry.

Mr. Hite: We fully agree with that.

The Court: I don't believe in that, and I don't think it has anything to do here.

Mr. Hite: We only do that, Your Honor, to show the fact that there was these proceedings pending at that time, for no other purpose whatever.

The Court: I supposed by your inquiry of the clerk, he having the papers offered, that you had covered all you wanted to cover.

830 Mr. Hite: I think it is not competent to show by the clerk's statement that a petition was filed, but the paper itself must be filed.

The Court: You may have the paper, but I want it distinctly understood, so far as the court is concerned, what occurred at the

bankruptcy trial, that has nothing to do with this inquiry here. We are limited simply to two questions.

Mr. Hite: I understand that.

Mr. Harkless: We are in accord with Your Honor on that.

The Court: I am glad to have concurrence in one respect at least of something I have said. Bring the jury in. I have said this now, so as to get before counsel on either side the court's idea about this bankruptcy proceeding.

Mr. Hite: We are fully in accord with the court.

The Court: The bankruptcy proceeding, the judgment entered upon that motion in that proceeding cannot affect this defendant one way or the other.

Mr. Hite: We so understand it.

The Court: That is the way I rule.

(Jury comes into court at 2:55 p. m.)

The Court: The papers that are offered by Mr. Hite are allowed by the court to be read to the jury.

Mr. Hite: Reading Exhibit No. 101, and Exhibit No. 102.

(Copies of Exhibit- Nos. one hundred and one and 102 are attached hereto and made a part hereof.)

Mr. Hite: If Your Honor please, as to Exhibit No. 103, Mr. Albaugh by mistake brought the wrong paper and I ask leave to withdraw Exhibit No. 103 and take leave at another time to offer that exhibit, being the original petition in the matter of the bankruptcy proceeding against the defendant personally; this paper that we had was an amended petition.

The Court: This was against the corporation you have read?

Mr. Hite: Yes, I asked Mr. Albaugh for the original petition against the defendant personally, and by mistake he gave me the amended petition. Exhibit No. 103, I ask to withdraw with leave to substitute when he gets the proper paper.

The Court: You may withdraw it.

31 Mr. Albaugh: And it will be necessary to bring the other paper?

Mr. Hite: I may be able to get the United States Attorney to agree to a copy.

Mr. Albaugh: If not I will have the other paper here.

J. G. FLEISCH, called as a witness on behalf of the defendant, having been first duly sworn, testifies as follows:

Direct examination.

Questions by Mr. Hite:

Q. Where do you reside Mr. Fleisch?

A. In Topeka, is that what you want?

Q. Yes sir; and how long have you lived there?

A. All my life.

Q. What is your occupation; what business are you in?

A. Wholesale grocery business; that what you want?

Q. It isn't what I want, it is the fact.

The Court: In what kind of business are you engaged?

A. Wholesale grocery and dry goods business.

Q. What corporation are you connected with?

A. Davis Mercantile Company.

Q. Were you connected with that corporation in the month of December, 1913?

A. Yes sir.

Q. In December 1913?

A. Yes sir.

Q. What is that corporation's principal place of business in Fleisch?

A. Topeka, Kansas.

Q. How long has it been doing business there under that and other names?

A. Under that name since 1909.

Q. And previously for how long?

A. Well, it was the Parkhurst Davis Mercantile Company, if I remember rightly since May, 1894.

Q. In December 1913 did the Davis Mercantile Company through you, have a transaction with George S. Badders in which any money was paid to you for the Davis Mercantile Company?

A. Yes sir.

Q. State what that was?

Mr. Robertson: I don't believe in the testimony offered there is any claim here that the Badders Company owed the Davis Mercantile Company anything; I don't remember any such testimony.

The Court: Did he owe your company anything at that time?

A. He did.

The Court: Go on.

Mr. Hite:

Q. Did he pay you any money in December 1913?

A. Yes sir.

Q. How much?

A. Six hundred dollars.

Q. When?

A. On December 23rd.

Q. How much did the Badders Clothing Company owe to the Davis Mercantile Company at that time?

A. \$1228.00.

Cross-examination.

Questions by Mr. Robertson:

Q. Who paid you that; who paid it to you?

A. George S. Badders.

Q. Pay to you personally?

A. He did.

Q. In what way?

A. In currency.

Q. In currency; what if anything did he say to you when he paid it to you?

A. I don't just remember the conversation but he said that was about all that was due, and it was within a few dollars of what was due.

Q. Now, was it paid; what I want to get at is whether there was a conversation between you and him as to whether he was paying this personally himself or not?

833 A. Not that I remember of.

Q. It was he who paid it?

A. Yes.

Q. And paid it in currency?

A. Yes sir.

Q. Where?

A. In the store.

Q. How much does he still owe you?

A. \$628.

Q. He theretofore bought goods of you?

A. Yes sir.

The Court: That amount due in December 1913, twelve hundred dollars?

A. As I remember, of course without the books I couldn't verify that; it was about six hundred and twenty some odd dollars that was due at that time.

Q. When did the other come due?

A. The following month.

Q. What time the following month?

A. Well the bills were dated November first, sixty days, that would be January first.

Mr. Hite: Just one question Mr. Fleisch.

Q. How long had the clothing Company been doing business with the Davis Mercantile Company that you were asked about their doing business? Just approximately?

A. I don't remember, because they were doing business with us right after we engaged in the dry goods business. And I don't know exactly what date that was.

Q. Was it a couple of years?

A. Yes sir, fully that.

(Witness excused.)

J. C. WALLACE, called as a witness on behalf of the defendant, having been first duly sworn, testifies as follows:

Direct examination.

Questions by Mr. Hite:

834 Q. State your name?

A. J. C. Wallace.



Q. Mr. Wallace, where do you live?

A. Kansas City, Mo.

Q. Did you ever live in Topeka?

A. I did yes sir.

Q. How long?

A. About eighteen years.

Q. When did you leave Topeka?

A. I left Topeka in July 1912.

Q. 1912.

— Yes sir.

Q. Are you acquainted with the defendant George S. Badders?

A. I am.

Q. Did you at one time work for the Marshall Clothing Company?

A. I did.

Q. Do you know of the circumstance of Mr. Badders becoming interested in that store?

A. To a certain extent, yes sir.

Q. Were you there when he acquired an interest in the Marshall Clothing Company?

A. Yes, I was.

Q. What was the nature of your duties there?

A. I was acting as bookkeeper and collector, looking after the accounts in the books.

Q. Mr. Wallace are you able to state about how much the Marshall Clothing Company owed in the fall of 1911 when Mr. Badders came connected with it?

A. Why haven't you got the records; I can't off hand call any—

Q. Well, approximately; I am not asking for any exact amount.

Mr. Robertson: Mr. Hite he is not trying to answer the question as you asked it.

A. I can't give the figures definitely; of course I could if I had the record because everything was made up in full at the time.

Q. You made up the record at that time?

835 A. Yes sir, within a reasonable amount of current expenses but the general liability of the firm I made up.

Q. Can you tell the jury Mr. Wallace about how much that was?

Mr. Robertson: Well, can you?

The Court: If there is an objection to it please rise and state the objection that the court may intelligently rule.

Mr. Robertson: Objected to as immaterial.

The Court: Will you tell me what the purpose of this is?

Mr. Hite: Your Honor, it is for the purpose of showing the liabilities, approximately, at that time, and that they were paid by the defendant out of the proceeds of the sale at that time.

The Court: The sale had at that time?

Mr. Hite: Yes Your Honor.

The Court: How does that affect the 1913 transaction.

Mr. Hite: Upon the theory, Your Honor, it goes to the intent of the defendant in regard to the sale, also—

The Court: That is to say, if he paid the debts of 1912 for the company that you speak of, that may have something to do with his intent as to what he was going to do in 1913?

Mr. Hite: Under similar circumstances, as we may be able to show.

The Court: Answer.

A. I can't answer that definitely, but I will state, whatever those liabilities were, they were in full, I don't remember the figures, that has been three years ago.

Q. You mean they were paid in full?

A. Paid in full afterwards, yes sir.

Q. Were you present in the Marshall Clothing Company's store during a sale that took place in the fall of 1911?

A. I was there yes sir.

Q. Please state Mr. Wallace, if you know, who had charge of that sale as sales manager?

A. Mr. Gilmore.

Q. Was that Mr. Gilmore of the firm of H. L. Gilmore & Co.?

A. Yes sir, the sales company, I don't just remember the company.

836 Q. Do you know where they reside?

A. I understood afterwards it was Syracuse or some place in New York.

The Court: Same people you had here the other day?

Mr. Robertson: No dispute about that at all Your Honor.

The Court: Same man made that sale as made the other sale.

Mr. Hite: Not the same man, same concern.

Q. State Mr. Wallace whether that sale was extensively advertised in the local papers?

Mr. Robertson: Objected to as immaterial.

The Court: Sustained.

Mr. Hite: Except.

The Court: I can't see what relevancy in the world it can have to this case, one way or the other. If you want to show there was a sale, and that the indebtedness that theretofore existed was paid out of that particular sale, what that may have to do with this is more than I can see. Objection sustained.

Mr. Hite: Except.

Q. Mr. Wallace did you personally have anything to do with the payment of the debts of the Marshall Clothing Company after Mr. Badders took charge?

A. Yes, I had considerable to do; I made all the statements, I kept the books of the wholesale companies showing the different items we owed to them, and afterwards made up the statements.

Q. Did you have anything to do with drawing checks in payment of those accounts?

A. I wrote the checks, I didn't sign them.

Q. Were all of those accounts paid after the sale?

A. Yes sir they were all paid according to that ledger, yes sir I believe that is true.

Q. You remained in the service of the Marshall Clothing Company how long after that sale?

A. Well sir I remained there till about I think, no, I can't recollect just exactly the day, but it was in July when I came to Kansas City.

837 Q. 1912?

A. Yes sir, 1912.

Q. Were you in that store when Mr. Frankenstein went into the business?

A. I was.

Q. Did you become acquainted with him then?

A. I did.

Q. Do you know of the circumstances in which he became interested in that firm?

A. To a certain extent, yes sir.

Q. Now during the time that you were there Mr. Wallace, did you observe anything on the part of the defendant George S. Badders in connection with that business that was unbusinesslike in any way.

Mr. Robertson: Object to that.

The Court: Sustained.

Mr. Hite: Except.

Q. How did Mr. Badders and Mr. Frankenstein conduct that business as to being in a regular way or otherwise?

Mr. Robertson: Objected to as incompetent, irrelevant and immaterial.

The Court: Sustained.

Mr. Hite: I only want to go far enough to have the court rule along the line; I didn't intend to take up any unnecessary time.

The Court: When the court rules upon a question it is not to be repeated again in different form so as to get a ruling again.

Mr. Hite: May I make an offer of proof. I offer to prove by this witness—

The Court: Well you offer to prove by what?

Mr. Hite: That during the period when he was there up to July 1912 that all of the business transactions of the Badders Clothing Company, and conduct of this defendant and Mr. Frankenstein, were perfectly regular; the debts were regularly paid, and that the transactions in every respect were perfectly honest and above board.

838 Mr. Robertson: Objected to as incompetent, irrelevant and immaterial.

The Court: Such offer as you offer to make is objected to and the objection is sustained.

Mr. Hite: Except.

Cross-examination.

Questions by Mr. Robertson:

Q. Who else if any one was interested in this business at that time besides Mr. Badders?

A. Who else?

Q. Yes?

A. Why I understood that Mr. Frankenstein and Mr. Rinehart at that time was a part of the store.

Q. You were bookkeeper, weren't you?

A. Yes, I was in a certain way.

Q. Well, you know who the stockholders were?

A. No I don't know who carried all the stock; I didn't keep the stock book; I don't know who had the stock at all; but I knew these three men were interested in it.

Q. Didn't you know that firm when they made their statement to the secretary of state at the end of that year, December 31st, showed an impairment of capital stock in their business of nearly one thousand dollars?

A. How much?

Q. Nearly one thousand dollars, nine hundred and ninety-nine and some cents, at the conclusion of 1912?

A. I was not there in December 1912; I was there in December 1911; I have been at Kansas City two years you see, I left there in July 1911.

Q. The time you were talking about then is 1911?

A. That big sale, yes.

Q. And Mr. Rinehart was there?

A. Mr. Rinehart was there.

Q. And didn't you know he held five thousand dollars of stock then?

A. I knew he held some stock.

839 Q. And Mr. Frankenstein had seventy-five hundred dollars' interest in that business at that time?

A. I don't know the amounts of each of them, no sir, I didn't have the stock book; I say I didn't understand what they had each; I knew they were interested in it of course.

Redirect examination.

Questions by Mr. Hite:

Q. Mr. Wallace, do I understand you to say Mr. Rinehart and Mr. Frankenstein were interested in that store at the same time?

A. I suppose at the time of this sale, I don't know; after the sale I believe Mr. Rinehart was not interested; I think at the time of the sale he was, I don't know.

Q. Isn't it true Mr. Wallace Mr. Frankenstein didn't become interested until after this sale?

A. That is my judgment, he was there at the time; I don't know the details of that stock business at all.

(Witness excused.)

MRS. IRA BURDICK, called as a witness on behalf of the defendant, having been first duly sworn, testifies as follows:

Direct examination.

Questions by Mr. Hite:

Q. You have been sworn in this court, have you not, Mrs. Burdick?

A. I have.

Q. Mrs. Burdick how long did you remain in the Badders Clothing Company store after the receiver took charge?

A. Until about two o'clock the next day.

Q. On a previous occasion in your testimony, you said something in reference to having made some lists or charge slips for goods that had been sold on credit and also a charge slip to Mr. Badders' personal account for certain goods; do you recall that testimony?

A. Why I never made the slips, they were given to me,  
840 the boys in the store made the slips and Mr. Badders.

Q. What did you do with those slips?

A. I pinned them together and put them in the safe.

Q. Were those slips there, including the one, or two, whatever number there was, of charges to Mr. Badders' personal account when you left the store?

A. They were there that morning when I left.

Q. That would be the morning after the receiver took charge?

A. Yes, the morning after the receiver took charge.

Q. And where were they?

A. They were just lying down in the bottom of the safe where I always put the charges.

Q. Did you have any conversation with the defendant with reference to the charge slips for his account?

A. Why he just gave them to me and told me to charge them.

Q. I mean after the goods were returned?

A. Well he told me to mark those tickets off.

Mr. Robertson: Did you have a conversation?

A. Well, he told me to mark the goods off.

Mr. Robertson: Move to strike out the answer as not responsive, self serving statement.

The Court: Answer.

A. Well I had the conversation; he told me to mark them off was all.

The Court: What was it he marked off?

A. The goods. He told me to mark them returned, the tickets I had in the safe.

Mr. Hite:

Q. When you say "mark them" do you have reference to these charge tickets?

A. Several charge tickets, yes sir.

Mr. Robertson: This strikes me, Your Honor, as purely repetition of what is already in the case.

The Court: I suppose from the testimony that has been given here, that certain goods were charged to him on a slip, and that when the goods were returned he told her to destroy the slip or take them off.

Mr. Hite: Don't understand he told her to destroy the slips, but mark them off.

The Court: Mark them returned, so they wouldn't be on the slip; and as I understand her testimony it was after certain goods were returned he told her to mark them returned, they would mark them off the slip.

Mr. Hite:

Q. And as I understand it Mrs. Burdick, these charges to Mr. Badders' personal account were made on a slip of paper as merchandise charged to that account so much money, is that correct?

A. They were charged as goods taken as we charged to any one else.

Q. And as I understand you, that after the goods were returned the Mr. Badders instructed you to mark that, the goods were returned, is that correct?

Mr. Robertson: Objected to as repetition; object to it for that reason.

The Court: As I understand certain goods were charged to his personal account on a slip?

A. Yes sir.

Q. Afterwards he told you to mark those goods with which he was charged, returned?

A. Yes sir.

Q. And that is what you did?

A. No sir, I didn't do it, I was busy and neglected to do it.

Q. So the slip left there showed he had been charged with these without having the notation on that returned?

A. Yes sir.

Mr. Hite:

Q. Had those slips been posted into the general books?

A. No.

Q. What was done with charge slips ordinarily?

A. Well, ordinarily we post them every day, but during December and January I didn't do any charging.

Q. Why, Mrs. Burdick?

A. Well, there was just a few, everything was supposed to be cash, and I didn't have time.

Q. This was done for want of time?

A. For want of time, I was pretty busy with other things.

Q. Mrs. Burdick, what time, with reference to the receiver coming in did Mr. Badders leave the place permanently?

A. I don't remember; I thought he left that evening.

Q. The evening the receiver took charge?

A. I think it was rather late in the evening.

Q. Had he gone at the time you left the next day?

A. Yes, he was not there when I left.

Q. At the time you left the receiver was in full charge of the matter?

A. Yes sir.

Cross-examination.

Questions by Mr. Robertson:

Q. Now after the receiver took charge, which I believe was January 30, 1914, were you there after that?

A. I was there until the next day about two o'clock.

Q. See Mr. Badders there that day?

A. I don't remember seeing him there.

Q. You don't remember whether he was or not?

A. I don't remember whether he was or not.

Q. You don't know whether he was there right along with Mr. Clark the receiver in the store after that?

A. No I was not in the store after that day.

Q. Mrs. Burdick do you know Mr. Clark, the receiver, the day he took charge, saw those slips there in the safe?

A. I don't know.

Q. And do you know whether they were there next day?

A. They were there Saturday when I left.

Q. But the next day after the receiver took charge, do you know whether they were there?

A. He took charge on Friday and they were there on Saturday.

Q. Well do you know whether they were there when the receiver went through the vault or safe?

A. I don't know when he went through the safe.

Q. You don't know anything about that?

A. No.

(Witness excused.)

843 IRA BURDICK, called as a witness on behalf of the defendant, having been first duly sworn, testifies, as follows:

Direct examination.

Questions by Mr. Hite:

Q. Mr. Burdick were you in the Badders Clothing Company store during the sale of the fall of 1911?

A. Yes sir.

Q. After that sale was concluded, stated whether there were some close outs or odds and ends of suits and things of that kind on hand?

A. Yes sir.

Q. Were they suits of clothing?

A. Yes sir.

Q. About how many?

A. I think something between seven and eight hundred.

Q. Were some of those sold during that sale?

A. Yes sir.

Q. Do you know of any sale made of such articles after the sale to the August Clothing Company?

A. Yes sir.

Q. State what you know about that?

Mr. Robertson: Objected to as incompetent, irrelevant and immaterial.

The Court: Sales of some of that clothing?

Mr. Robertson: Yes, that was made way back in 1911?

Mr. Hite: Back in 1912.

The Court: Objection sustained.

Mr. Hite: I desire to make a short offer about this.

The Court: Need not mind about the offer the objection is sustained.

Mr. Hite:

Q. Mr. Burdick state if the August Clothing Company——

(To the Court:) May I be permitted, Your Honor, to go one or two further questions.

The Court: Yes.

844 Q. State Mr. Burdick whether or not there was a sale of those close outs or odds and ends of suits, of which you speak to the August Clothing Company at a very small percentage off the wholesale price?

Mr. Robertson: Objected to as incompetent, irrelevant and immaterial, and a repetition of the question ruled out.

The Court: I think so and the objection is sustained.

Mr. Hite: Except to both rulings of the court, please.

Q. Mr. Burdick state whether or not as a result of the sale of 1911 whether practically all of the old stock that had been in there prior to Mr. Badders acquiring an interest in that store had been disposed of?

Mr. Robertson: Objected to as incompetent, irrelevant and immaterial.

The Court: Answer.

A. Yes sir, it was, most of it was sold.

Q. Mr. Burdick do you know of the Badders Clothing Company in 1913, along in the fall of the year, having ladies' hosiery in its stock?

A. Yes sir.

Q. State if you know whether that stock moved and was sold rapidly or whether it was sluggish as to sale?

A. No sir it didn't sell very rapidly; didn't have much ladies' trade on that.

Q. State what was the reason for that, if any, having in mind the various colors of such hosiery.

A. We had quite a few high colors, pinks and light blues and



white and champagne color, sold a few of the black and a very few of the tan.

Q. Was it a desirable stock there?

Mr. Robertson: Objected to as calling for the conclusion of the witness, and immaterial. Withdraw it.

The Court: Go on.

A. No sir, it was not.

Q. Did the Badders Clothing Company at that time and immediately after the sale of 1913 have any children's clothing left?

A. Yes sir.

845 Q. Was any of that children's clothing sold to the August people?

A. Yes sir.

Q. Was all of it or a part only?

A. I couldn't say for sure whether it was all or a part.

Q. State if you know Mr. Burdick how long that lot of children's clothing had been on hand?

A. Well a portion of it had been there since Robinson and Marshall.

Q. Since Robinson and Marshall?

A. Yes sir.

Q. And about how long was that?

A. That was four or five years old probably some of it; some of it was older than that; some of it had been in their stock that long.

Q. That was all closed out to the August Clothing Company was it?

A. Yes sir.

Q. You remained in the store, did you not Mr. Burdick, after the receiver took charge?

A. Yes sir.

Q. And what were you doing, if anything?

A. I assisted in invoicing the stock.

Q. Did Mr. Clark take any active part in the invoicing?

A. No sir.

Q. Who was the actual work of invoicing done by?

A. By Mr. Boyd, and Mr. Straub and Mr. Coulson.

Q. Mr. Burdick were you there in the store after the receiver took charge at any time when Mr. Badders came up to look at any books or papers?

A. And Mr. Fig also. Was I in the store——

Q. At any time when Mr. Badders came to look over some books and papers?

A. I was in the store when Mr. Badders came in there several times.

Q. Were you there on any occasion when Mr. Badders asked Mr. Thomas for permission to go through and look at some of the books and papers?

846 A. I don't remember of it.

Q. You don't recall that circumstance?

A. No sir.

Q. And how long did you remain with the receiver?

A. Well, I worked for him all during the invoice, the time they took the invoice, and then I went back afterwards, I think I was off a week and went back again and straightened up some of the stock and got it ready to make the receiver's sale; I think I worked for him three or four weeks. I couldn't say just exactly.

Q. Mr. Burdick, during that sale of 1913 what would you say was the average number of persons engaged in selling goods on the floor?

A. Average number of salesmen?

Q. Yes sir.

A. They would average probably thirty-five, thirty-seven a day salesmen.

Q. Do you know about how much those men received for their services? On the average?

A. On the average, would average from three and a half to four dollars a day I should think.

Q. Mr. Burdick do you know of any reason for the sale of 1913 being less successful than the sale that the store had previously held?

Mr. Robertson: Objected to as calling for conclusion of the witness.

Mr. Hite: I asked if he knows of any reason.

The Court: Answer.

A. I think the sale of Felix just prior to it had some effect on it so it wouldn't be as good a sale, and people didn't seem to have as much money to spend, didn't act like it, from the advertising of the sale, did not respond to it as readily as they did in 1911.

Q. When was the Felix sale?

A. I think it was in October prior.

Q. Do you know whether that sale was conducted by the same firm that conducted the sale in the Badders Clothing Company?

Mr. Robertson: Objected to as immaterial.

The Court: Answer.

A. By the H. L. Gilmore people, they are all connected, Gilmore and Adler.

Q. Was there much clothing disposed of in that sale?

A. I don't know, I never was in their store prior to that sale.

Q. Was the circumstances of the failure of the Felix Company generally known in Topeka, in the year 1913?

Mr. Robertson: Objected to as incompetent, irrelevant and immaterial, and assuming a state of facts not in evidence.

The Court: Answer.

A. Was it generally known they had failed?

Q. That they had failed?

A. Yes sir, it was reported around.

Q. And was it generally known they had held sales also elsewhere than in Topeka?

A. Yes sir.

Q. Mr. Burdick do you recall the circumstances of seeing Mr. McClintock and Mr. Quant in the store of the Badders Clothing Company in December 1913?

A. Yes.

Q. How frequently did you see either of them there?

A. Pretty often; Mr. Quant more frequently than Mr. McClintock I believe.

Q. How often would you say he was there?

A. A portion of December there he was there pretty nearly every day, or two or three times a day, sometimes oftener than that.

Q. Do you recall seeing Mr. Bennett Wheeler in the store during the same period?

A. Yes sir.

Q. Do you recall seeing Mr. Newell in the store during that same period?

A. No sir.

Q. What is Mr. Bennett Wheeler's business or occupation in Topeka?

848 A. Attorney at law.

Q. Did you see Mr. Guggenheim in the store during that period?

A. Yes sir.

Q. How many times, if you know, did Mr. Guggenheim come to Topeka during the period from about Christmas up to the middle of January?

A. I think about three different times.

Q. And how much of the time during these visits was he at the store of the clothing company, if you know?

A. Well I don't just — how much of the time, I don't remember how long he stayed there each time, but he was in the store quite often during the days he was there.

Q. Did he go around looking over the stock?

A. Yes sir I think he did some.

Q. Did he remain in the store very long at a time when he came there?

A. Why sometimes he would stay half hour, sometimes longer; sometimes not as long.

Q. Did you see him in the store at any time with Mr. McClintock or Mr. Quant?

A. I couldn't say positively to that, I don't remember.

Q. Mr. Burdick state what, if anything, you know about the Clothing Company or Mr. Badders cancelling some orders for fall and winter goods, do you know anything about that?

A. Yes sir.

Q. State what you know about that?

A. Why Mr. Graham was there and we went over Stein-Bloch's line and picked out some stuff that we wanted to cancel; I have forgotten just the amount, but I know we picked out quite a number of patterns.

Q. Do you know whether there was any relation between the fact of having these cancellations and the Felix failure?

- A. Well it had something to do with it, yes sir.
- Q. And what did it have to do with it, if you know?
- A. Thought we had bought too much stock on account of having the sales there, that we wouldn't be able to dispose of it.
- 849 Q. I don't believe I fully understand that Mr. Burdick?
- A. Well, as I stated it, we cancelled it on account of Felix having a sale, because we thought we wouldn't be able to handle as much that season as we had bought.
- Q. Well, do I understand the effect of the Felix sale would be to stop your sales in the regular business; is that it?
- A. That is the idea.
- Q. Is that the effect of a special or sacrifice sale in the clothing business?
- A. Generally is, yes sir.
- Q. Now Mr. Burdick, state whether you know anything as to the prices marked on the goods offered in the sale of the Badders Clothing Company in 1913?
- A. No, I don't believe I quite catch your question.
- Q. What prices were marked on the goods?
- A. What prices were marked on the goods?
- Q. Yes; as to there being more or less than the wholesale price?
- A. They were all marked more than the wholesale price.
- Q. What was the first cut price that was put on at the sale?
- A. I think twenty-eight dollar stuff was marked \$14.75, or something like that; twenty-five dollar stuff was \$16.25; twenty-two fifty, \$15.50; eighteen dollar was \$11.50; I couldn't be positive just exactly as to those amounts.
- Q. How much would you mark an eight dollar suit for, for illustration?
- A. An eight dollar suit, you mean coming in from the wholesale house?
- Q. Yes, during the sale I mean.
- A. Mark it fifteen dollars.
- Q. You would mark that for the selling price, at fifteen dollars?
- A. Yes sir.
- Q. Now after that sale had progressed for some time at the first price, state Mr. Burdick whether the selling price was cut, and if so to what?
- A. Yes, it was cut.
- 350 Q. You say it was cut?
- A. Yes.
- Q. About how much Mr. Burdick?
- A. I think it was then changed to what they call nine and one-half smash.
- Q. Nine and one-half smash?
- A. Yes.
- Q. Now about the time of that change in the prices state Mr. Burdick whether any of the stock of clothing or any other goods in the store were taken out of the sales room upstairs and taken out of the sales?
- A. Yes sir.

Q. Do you recall any controversy that arose about that between Mr. Badders and Mr. Adler who was conducting the sale?

A. Why Mr. Adler said he didn't think it would be a good thing to take any of the better stuff out and Mr. Badders said I can't afford to sell it at this price.

Q. Now what was done with this clothing that was taken out?

Question withdrawn.

Q. What was the character of the clothing that was removed from the general sales room and out of the sale?

A. It was Stein-Bloch's and Society Brand, mostly and some of Goldwater's.

Q. Mr. Burdick were any of the suits that you say were marked fifteen dollars, were any of them marked up during the sale?

A. Yes sir.

Q. How much?

A. Well, some of them were marked eighteen, some of them twenty, and I think some of them were even marked \$22.50.

Q. When the Stein-Bloch goods and the Society Brand goods were taken out of the sale, what was done with them Mr. Burdick?

A. They were taken down to the basement and piled up in the stock room, covered with some cloth we had there, white cloths for covering clothing piled in the basement.

Q. Well was the basement used for the accommodation of customers as well as the upstairs floors?

851 A. No sir.

Q. Didn't they sell overalls and things of that kind down stairs?

A. Yes sir they did too.

Q. You know of the fact of customers going to the basement to look at goods?

A. Yes sir, at overalls and some of those things down there.

Q. Were these goods taken out of the sale and down into the basement and covered up so people would not see them?

A. Why some of them were and some were covered up and some were not.

Q. Were they left exposed to the view the same as the other goods in the store were?

A. No sir.

Q. State if you know Mr. Burdick what the effect of this sale was upon the retail clothing business there in Topeka?

Mr. Robertson: What sale are you talking about?

Mr. Hite: Sale of December 1913.

Q. And on the competitors of the Badders Clothing Company?

Mr. Robertson: I suppose that is immaterial, Your Honor.

The Court: Go on and ask the question.

A. I talked to the boys in the other stores——

The Court: Needn't tell that.

Mr. Hite:

Q. I am just asking what the effect was, if you know, Mr. Burdick?

A. I don't know anything then.

Q. Was the effect of that sale to some extent to decrease the business of the competitors of the Badders Clothing Company?

A. I think so.

Mr. Robertson: Objected to as leading. And it has already been shown he cannot.

The Court: Answer. You may state whether it did or not; I suppose it did?

A. I think so, yes sir, I said it did.

Mr. Hite:

Q. Who was the chief competitor in Topeka of the Badders Clothing Company at that time?

852 A. Palace Clothing Company.

Q. Who are the proprietors of the Palace Clothing Company?

Mr. Robertson: Objected to as immaterial.

The Court: sustained.

Mr. Hite: Except.

Q. Mr. Burdick do you know of any goods that were sold during that sale at any less than cost?

A. I don't think there was anything sold at less than cost in that sale unless it was, might have been a few, when we put them at five dollars, cost a little over that, but not many.

Cross-examination.

Questions by Mr. Robertson:

Q. Must have been a great deal of the goods then that was not exposed to the public for sale at all?

A. Well at the start of the sale there was not, but when they got to the nine and a half smash they put the better stuff away.

Q. Take along from about the 20th of December on, were they offering all of the goods to the public?

A. Not this that we carried to the basement.

Q. The higher class goods then had been taken out?

A. Yes.

Q. Did you know about the fourteen cases that were shipped away?

A. I didn't know until they came back.

Q. Now when they had the nine and a half smash you were talking about, weren't there a number of dollar neck tie pins offered also with every suit that anybody might buy?

A. I don't remember that.

Q. Along in January, Mr. Badders continued advertising in the newspapers didn't he?

A. I think he did, yes sir.

Q. And he was around there all the time, every day?

A. Yes.

Q. If the store was open New Year's Day he was there, he not?

853 A. I don't know, I wasn't there.

Q. The next day?

A. Yes sir.

Q. And the next day?

A. Yes sir.

Q. He was there all the time, wasn't he; isn't it safe to say he there every day right along every day up until the receiver charge? That is, I mean business days when the store was open.

A. He was there a portion of the day each day, might have one or two days that he wasn't.

Q. Now this Phoenix hosiery that you talk about had been some time one of your regular lines there in the store?

A. Not a great while, just put it I think the one season.

Q. One season?

A. Yes sir.

Q. You were selling some of it right along all the time?

A. Yes sir, I stated we were.

Q. Mr. Burdick don't standard houses, when they find a thing is not adapted to the business of their customer, aren't they will to take it back and give credit for it; isn't that a common thing to do?

A. Not to my knowledge.

Q. Wasn't that often done in the Badders business there, goods returned that were unsuitable for some purposes, or not?

A. When they first come in, if you return them right then, sir.

Q. Don't you know about three hundred dollars' worth of Phoenix hosiery had been ordered and received a few days before this commenced?

A. No sir.

Q. You didn't know about that?

A. I didn't know about that, no sir.

Q. You were there while the invoice was being taken after receiver took charge?

A. Yes sir.

854 Q. Did you see Mr. Badders around there often while the invoice was going on?

A. Can't say, I did, no sir, not while the invoicing was going on.

Q. Didn't you see Mr. Badders and Mr. Clark selecting papers for the company around there, laying aside things to be taken care of?

A. No sir, I saw them up at the desk; I didn't know what they were doing; I was down on the floor taking the invoice.

Q. Who had the management and supervision of this invoice while you were taking it?

A. I suppose Mr. Clark.



Q. Mr. Clark; he was there?

A. He was the receiver, yes sir.

Q. Mr. Clark is not a merchant himself, is he?

A. No sir.

Q. And he had merchants there taking the invoice and you were one of them, isn't that true?

A. Yes sir.

Q. But he was there on the job, looking after it, as far as he could, as receiver, and not being a merchant?

A. Yes sir.

Q. Now you talk about some cancellations of the Stein-Bloch stock; just to refresh your memory I will ask you if you are not mistaken about that date; weren't those cancelled way back in the summer in warm weather?

A. In the summer; along in the fall; the fall stuff is always bought the spring before, along sometimes in June for the next fall, and earlier than that sometimes.

Q. Now don't the Stein-Bloch people sell their fall stuff as early as April?

A. I think they do at times.

Q. And Mr. Burdick, are you clear now as to the date of those cancellations?

A. No sir I couldn't say positively the date of them.

Q. I wish you would look that one thing up if you will please, so that I may ask you further about it later.

Q. Now who suggested these cancellations; who suggested they be made?

855 A. That I couldn't say.

Q. Do you know whether it was Mr. Badders or not?

A. No I don't; Mr. Graham was in the store and he and Mr. Fig and I went through it, I think it was Mr. Fig.

Q. What was Mr. Graham there for?

A. He was secretary of the company along about that time.

Q. Well he was a travelling salesman for Michael Stern & Co.?

A. Yes sir.

Q. And selling goods when he could there to the Badders Company?

A. Yes sir.

Q. And wasn't that his mission there?

A. I couldn't say whether it was at this time or not.

Q. Did he sell same kind of clothing Stein-Bloch's sell?

A. No he has not as high priced stuff as Stein-Bloch.

Q. Well he sold gents' clothing?

A. Yes sir.

Q. You say Mr. Adler protested against taking goods out of the store during the sale?

A. He said that he didn't think it was a good thing to take the better stuff out of stock.

Q. Did you see Mr. Adler take any stuff out of the stock?

A. Mr. Adler, no.



Q. Did you ever see any taken out while he was present, observing it?

A. While he was there in the store?

Q. No, I mean any that he observed; can you say that you saw him watching the taking out of clothing?

A. Yes sir.

Q. You are certain about that?

A. Yes sir.

Q. And what was done with it?

A. I took it down from the hangers and we folded the pants and vest together, folded inside the coat.

Q. Mr. Adler assisting in that?

A. He didn't assist in it but he was standing there talking to me while I was doing it.

Q. Did he make it plain there that it was not his policy and he didn't approve of that kind of business?

A. I don't know as he said anything particularly about that.

Q. Did you know that stuff was being taken to the basement for the purpose of shipping it out?

A. No sir, I did not.

Q. Certain fifteen dollar suits were marked up; what was the reason they were marked up?

A. We were advertising stuff there fifteen, eighteen, and higher priced stuff at nine and one half.

Q. Was it goods that were selling well that you done that on, or stuff that was going slow?

A. It was according to what the suit looked like; if it looked a little better than other fifteen dollar suits, it was marked up.

Q. If good sellers, it is marked up, isn't that true?

A. Yes sir.

Q. Now, Mr. Burdick, I wish you would look up the date of those cancellations, and I would like the permission when he gets the information to recall him.

A. I don't know where I shall find it.

#### Redirect examination.

#### Questions by Mr. Hite:

Q. I want him to state, if he knows, why Adler and Stern objected to these goods being taken out of the stock?

The Court: Did they say why they objected?

A. Not that I remember of.

#### Mr. Hite:

Q. Did either one of these gentlemen have any interest in the store Mr. Burdick?

A. Not to my knowledge.

Q. What were they there for?

A. Making this sale and getting commission on the sale.

Q. Isn't it a fact Mr. Burdick these objections were made, to your

knowledge, because they didn't want to lose the sale of this high priced goods?

57 The Court: That may be inferred.

Mr. Hite:

Q. Mr. Burdick in reference to these goods you speak of being taken out of their places while Mr. Adler was there and the other goods that were removed from the sale, am I to understand from your testimony they were taken out of the store or taken down into the basement?

A. Taken down into the basement I said. I don't know they were taken out of the store.

### Recross-examination.

Questions by Mr. Robertson:

Q. Did you know about the affidavit that Mr. Badders printed in the newspapers on the 21st of December, where he invited his friends to buy, and said that every single dollar's worth of stuff that was ordered was there for their inspection. Do you know about that?

Mr. Hite: We object to that Your Honor.

The Court: Sustained. You have that in.

(Witness excused.)

The Court: I have inspected this demurrer that you put in since was filed here, and have examined it; I supposed it was a general demurrer; I see it is a specific demurrer; and the demurrer, so far the first count is concerned, is sustained; so far as the 6th count, sustained; so far as 7th count, is sustained.

Mr. Robertson: The sixth Your Honor?

The Court: I haven't got the list of them. Demurrer to the first count, sustained.

Mr. Robertson: Next is the 7th, Your Honor, if I remember it.

The Court: I think you are right about that. As to the 7th count is sustained; as to the 8th count is sustained; 10th count, sustained; and to the 12th count it is sustained. Let that be entered because when I passed on this motion I supposed it was a motion of a different character, and since I have inspected it I make the order now in reference to those several counts.

Mr. Hite: Perhaps Your Honor had better prepare a little journal entry to that effect, allowing us the exception as to other counts.

The Court: I have stated what I have here in order to keep the record straight. I shall in my charge to the jury repeat what I have said, taking those other counts away.

Mr. Hite: I understand, Your Honor.

4:15 P. M. Recess of court.)

(4:3- p. m.)

I. J. FRANKENSTEIN, called as a witness on behalf of the defendant, having been first duly sworn, testifies, as follows:

Direct examination.

Questions by Mr. Hite:

Q. Where do you reside Mr. Frankenstein?

A. Hillsdale, Mich.

Q. What business are you engaged in there?

A. Clothing business.

Q. Are you acquainted with the defendant George S. Badders?

A. I am.

Q. Are you acquainted with his wife?

A. I am.

Q. When did you first become personally acquainted with him Mr. Frankenstein?

A. In the fall of 1911.

Q. Whereabouts?

A. At Hillsdale.

Q. Was any one with Mr. Badders when you first met him?

A. My brother.

Q. What is your brother's name?

A. Harry.

Q. Is that the Mr. Harry Frankenstein who is connected with the Stein-Bloch Company?

A. It is.

Q. Did you have a conversation with Mr. Badders at that time?

859 A. I did.

Q. Was it with reference to your going in with him into the clothing business?

A. It was.

Q. Do you recall the month in which that conversation took place, and if so, state what month it was?

A. I think it was in October.

Q. Do you know whether at that time Mr. Badders was in the clothing business or not?

A. He was not.

Q. Did you learn at that time whether or not Mr. Badders had had any experience in the retail clothing business?

A. He had not.

Q. When did you next meet Mr. Badders?

A. In Topeka.

Q. About how long after the first time that you met him at Hillsdale?

A. About a week.

Q. Did you come to Topeka by his invitation?

A. I did.

Q. Are you acquainted with Mr. George C. Guggenheim?

A. I am.

Q. How long have you known him? Approximately, will be sufficient?

A. Oh, five years probably.

Q. During that period have you known of his connection with the Stein-Bloch Company?

A. Yes.

Q. That is the relation in which you have always known him, is it not Mr. Frankenstein?

A. It is.

Q. Had you ever had any dealings with Mr. Guggenheim before you saw Mr. Badders?

A. I had not.

Q. Was it at the suggestion of your brother Mr. Harry Frankenstein that you came to Topeka to meet George Badders?

Mr. Robertson: Objected to as leading.

860 The Court: At whose instance did you come to Topeka, by invitation of your brother or Mr. Badders?

A. Why both I guess.

Mr. Hite:

Q. Mr. Frankenstein when you came to Topeka did you meet Mr. Guggenheim on that occasion in October 1911?

A. I met him at Topeka, or he met me.

Q. Was that meeting by appointment?

A. It was.

Q. Did you and Mr. Guggenheim and Mr. Badders go over the stock of the Marshall Clothing Company?

A. We did.

Q. With a view to buying it?

A. Yes.

Q. What was the result of the examination by Mr. Guggenheim and you and Mr. Badders into the matter as to there being a purchase or otherwise?

A. We decided not to buy it.

Q. Did you remain in Topeka after you reached that conclusion or any length of time?

A. No.

Q. You returned to Hillsdale I presume where you were in business?

A. I did.

Q. When did you next meet Mr. Badders?

A. In November at Topeka.

The Court: November of what year?

A. The same year.

Mr. Hite:

Q. At the time you met the second time in November had Mr. Badders acquired an interest in the Marshall Clothing Company?

A. He had.

Q. Was a sale in progress? At the store then?

A. It was.

Q. What was the occasion of your coming to Topeka in November, 1911, that is, who suggested it or at whose instance did you come?

A. Mr. Badders.

861 Q. He had written you on the subject had he inviting you to come?

A. I don't remember.

Q. But in some way you learned that he wanted to see you again?

A. Yes.

Q. Before coming to Topeka in November, 1911, did you have a conversation on the subject with your brother Mr. Harry Frankenstein?

A. I don't remember.

Q. It appears to be in evidence here Mr. Frankenstein that your brother Mr. Harry Frankenstein is a travelling salesman in this part of the country for the Stein-Bloch Company; do you know whether his business in that respect brought him out into this country in November, 1911?

A. I did.

Q. When you came in November did you meet your brother Mr. Harry Frankenstein at Topeka?

A. No; I don't remember whether I did or not.

Q. How long did you remain in Topeka in November 1911?

A. About one or two days.

Q. Did you see the sale in progress?

A. I did.

Q. Did you have any negotiations with Mr. Badders on that occasion as to your going into business with him?

A. I talked it over, if that is what you mean.

Q. You and Mr. Badders talked the matter over?

A. We talked the matter over.

Q. Who was then associated with Mr. Badders, if you know?

A. Mr. Rinehart.

Q. What was the result of your talks about you and Mr. Badders forming an association?

A. Why I decided to go back home and wait until the sale was over.

Q. When did you next come to Topeka, if at all?

A. In January.

Q. That would be January of 1912?

862 A. Yes.

Q. At whose instance did you come then?

A. Mr. Badders.

Q. In the meanwhile had you seen Mr. Guggenheim?

A. Yes.

Q. Had you talked with Mr. Guggenheim again on the subject of going in with Mr. Badders?

A. I did.

Q. About what time in January did you arrive in Topeka as to its being the early or latter part of the month?

A. The early part.

Q. The early part. Did you take up the matter of going in with Mr. Badders again at that time?

A. I did.

Q. And what was the result?

Mr. Robertson: When was that Mr. Hite?

Mr. Hite: January, 1912.

Q. What was the result Mr. Frankenstein?

A. Why I came out to Topeka to look over the proposition again.

Q. And was the matter between you and Mr. Badders concluded on that visit?

A. It was.

Q. State briefly what was concluded between you and Mr. Badders?

A. We was to form a stock company and I was to buy a half interest.

Q. Did you finally consummate that arrangement?

A. We did.

Q. How much did you pay for your half interest?

A. I paid ten thousand dollars.

Q. Was it necessary for you to borrow any of that money?

A. It was.

Q. How much?

A. Seventy five hundred dollars.

Q. Who did you borrow it from?

A. Stein-Bloch Company.

Q. Did you give them your notes?

A. I did.

Q. Did you give them any security?

A. I did.

Q. What was it?

The Court: How does that become material as to how much security he gave? The question is, did he go into the business and put the money in and got seventy five hundred dollars from the Stein-Bloch Company.

Mr. Hite: This security subsequently passed, Your Honor, between the Stein-Bloch Company and the defendant. It is not very material.

The Court: Let's shorten it by leaving out the immaterial parts of it.

Mr. Hite:

Q. Did you then move to Topeka after consummating the arrangement?

A. I did.

Q. About when did you move there permanently Mr. Frankenstein?

A. In March.

Q. Of 1912?

A. Yes.

Q. Did you go actively into the business with Mr. Badders?

A. I did.

Q. What was the condition of the Badders Clothing Company at the time that you went in, financially speaking was it in a sound financial condition, or otherwise?

Mr. Robertson: Objected to as calling for the conclusion of the witness.

The Court: State what condition it was, if you know; you paid ten thousand dollars for your part of it; how much did anybody pay for the other part? Do you know how — money was put into the concern; you put in ten thousand dollars?

A. Why there was twenty five thousand dollars stock issued.

The Court: Did you buy a share of stock for ten thousand dollars?

A. Yes sir.

Q. How many shares par?

A. One hundred and twenty five shares.

864 The Court: One hundred and twenty five shares.

Mr. Hite:

Q. Mr. Frankenstein do you know how much Mr. Badders paid the Marshall Clothing Company, or he and Mr. Rinehart paid the Marshall Clothing Company for their store?

A. Why I don't remember.

Q. To refresh your recollection wasn't it thirty thousand dollars?

A. Why something like that; I don't just remember; I wouldn't care to say.

Q. To further refresh your recollection wasn't it a part of that purchase that the new people who went in there assumed all the debts of the Marshall Clothing Company?

A. Why I had nothing to do with the debts of the Marshall Clothing Company.

Q. I understand that Mr. Frankenstein; I was asking you if you could tell the jury, if you know, whether that was a part of the arrangement between Mr. Badders and the Marshall Clothing Company?

A. Yes.

Mr. Robertson: Objected to as immaterial.

The Court: I don't see how that becomes material as to what that arrangement was.

Mr. Hite: What was the stock of this corporation that you had one hundred and twenty five share- in?

A. Twenty five thousand dollars.

Q. And you had one-half of it?

A. Yes.

Q. And for that you paid?

A. There was about twenty seven thousand dollars' worth of suits there.

Q. At the time you bought?

A. In my judgment.

Q. What was the general character of that merchandise as to being good or otherwise?

A. Why it was nearly all good. And what wasn't good was taken at a very low price and afterwards sold.

Q. How did it compare with the stock that you had seen on the occasion of your visit in October?

A. Well, as to quantity?

A. No, I mean as to the old stock having been all cleaned out by sale, or substantially so?

Q. Why all the old stuff that was left was in the basement and the best of that stock was good in my estimation.

A. Was there much of the old stuff left?

A. Robertson: Objected to as immaterial.

Court: Answer.

A. There was about six hundred and fifty suits.

Q. What became of those suits?

A. Robertson: Objected to as immaterial.

Court: Don't see what it has to do with this case.

A. Hite: I only want again to offer, Your Honor, to prove by this witness, and I will make the offer, to prove by this witness that five hundred or more of these suits were sold to this Augusting Company at a very small percentage on the wholesale cost.

Court: Was it?

A. Five hundred and fifty of those suits were sold to the Augusting Company for seven hundred and fifty dollars, but I picked one hundred of the good suits and kept them in stock, one hundred of the best suits.

Mr. Hite:

A. And as I understand, out of six hundred and fifty of the old five hundred and fifty were sold to August for seven hundred and fifty dollars?

Yes.

A. And you kept the best of the old stuff and distributed it in the market?

Yes sir.

Q. What per cent of the wholesale price would that be on the August?

A. Robertson: Object to that.

Court: Answer.

A. Why I never started to figure it on percentage, it is so low I wouldn't know how to start in; I presume the actual cost of that merchandise was five, six thousand dollars, seven and eight dollars.



Q. You mean the merchandise sold to August for \$750.?

A. Yes, cost Robinson and Marshall that.

Q. How much did you draw by way of salary or compensation?

A. Fifty dollars a week.

Q. And how much did Mr. Badders draw?

A. Fifty dollars a week.

Q. Now how long did your connection with the Badders Clothing Company continue, Mr. Frankenstein?

A. About fifteen months.

Q. And when did it terminate?

A. In May.

Q. Of 1913?

A. Yes sir.

Q. Wasn't it March, 1913, Mr. Frankenstein?

A. May.

Q. Was there any disagreement between you and Mr. Badders that resulted in your terminating the association?

Mr. Robertson: Objected to as leading.

The Court: Sustained.

Q. What were your relations with Mr. Badders at the time as to being friendly or otherwise during your association with him?

A. Why we were friendly.

Q. Now when you and Mr. Badders parted, did he buy your interest?

A. He did.

Q. How much did he pay you in cash?

The Court: For your stock. You had stock in the corporation?

A. Yes sir.

Q. You sold your stock?

A. Yes sir.

Q. How much did you get for it?

A. Ten thousand dollars.

Mr. Hite:

Q. How was that paid?

867 A. Seventy five hundred dollar note of mine to the Stein-Bloch Company, Stein-Bloch Company took his note for five thousand dollars, and the twenty five hundred dollar note was his note, for one year, endorsed by me.

Q. That made Mr. Badders owing the Stein-Bloch Company seventy five hundred dollars instead of you owing the Stein-Bloch Company seventy five hundred dollars?

A. Yes sir.

Q. Mr. Frankenstein what concern was the chief competitor of the Badders Clothing Company in Topeka during your stay there?

Mr. Robertson: Objected to as immaterial.

The Court: Sustained.

Mr. Hite: Except.

Q. Do you recall the fact of there being a children's department

in the Badders Clothing Company's stock, remaining over from the Marshall Clothing Company?

A. I did.

Q. Mr. Frankenstein did you leave Topeka before May 1913?

A. Why I think not.

Q. Wasn't this deal closing up matters between you and Mr. Badders finally finished in Hillsdale, Mich., after your return there?

A. Yes, it was.

Q. While you were associated with Mr. Badders in the Badders Clothing Company did you still remain interested in any clothing business in Hillsdale, Mich.?

A. I was.

Q. Does your clothing store in Hillsdale carry the Stein-Bloch line?

A. It does.

Q. And did it carry that line when you became associated with the Badders Clothing Company, continue to carry it, did it?

A. I don't understand.

Q. Perhaps my question is not intelligent.

The Court: The question is, had you carried the Stein-Bloch line of clothing along before you came here in your store at Hillsdale?

A. I did.

868 Q. And did that continue after you went back to Hillsdale, your connection with the Stein-Bloch Company?

A. Yes.

Mr. Hite:

Q. When you went in with Mr. Badders in the Badders Clothing Company in Topeka, that store did not carry the Stein-Bloch line, did it?

A. No sir.

Q. Do you know whether that line had been represented in Topeka at all before that?

A. Oh yes.

Q. To any extent by any one?

A. I don't know that, but I know that the clothing was handled in Topeka, at some time or other.

Q. What do you say Mr. Frankenstein as to the children's department of the Badders Clothing Company being profitable or otherwise?

A. It was not.

Q. Do you happen to remember Mr. Frankenstein about what the annual sales of that particular department were?

A. No, I don't know that.

Q. They were very small, were they?

A. They were small, yes.

Q. After you and Mr. Badders parted in a business way, state if your brother Harry Frankenstein endeavored to get another partner or Mr. Badders or another associate?

A. I don't remember that.

Q. You don't recall it?

A. I don't recall that.

Q. Are you able to state from memory Mr. Frankenstein about how much of the Stein-Bloch Company goods were purchased during your connection with the Badders Clothing Company, in round numbers I mean?

A. About twenty seven or eight thousand dollars, as nearly as I can remember.

Q. Do you recall the circumstances of Mr. Guggenheim coming to Topeka in February 1913 in regard to having an increase  
869 in the capital stock of the Badders Clothing Company?

A. Yes sir.

Q. State what was said in your presence by Mr. Guggenheim to Mr. Badders in regard to that matter?

A. I don't remember much about that.

Q. That was about the time that you were considering going back to Hillsdale was it not?

A. Yes sir.

Q. Now at that time the books, as I understand it Mr. Frankenstein showed some small loss; do you recall that?

A. Yes sir.

Q. Had you expected a loss the first year or not?

Mr. Robertson: Objected to as immaterial.

The Court: Sustained.

Mr. Hite: Except.

Q. Prior to your coming to Topeka and going in with Mr. Badders how long had you been in the clothing business?

A. All my life.

Q. Was the fact that there was a small loss in the business of the company for the year 1912 what lead you to go back to Hillsdale?

A. No sir.

#### Cross-examination.

#### Questions by Mr. Robertson:

Q. What lead you to go back to Hillsdale?

A. Why I was not satisfied with Mr. Badders' services to the company.

Q. What was the matter with them?

A. Why I didn't think he was giving as much attention to the business as he should.

Q. Didn't he give attention to it?

A. I didn't think so.

Q. Did he give any such attention to it as you did?

A. Why I thought not.

Q. Did he devote his time to the business?

A. Not very much.

Q. What was the condition about them in 1913, when you  
870 left him?

A. The business.

Q. No, what was the condition existing there as to his giving personal attention to the business, just prior to your going out of it in 1913?

A. I don't quite understand that; I can't get that through my head.

Q. When you went out of the business in 1913, I want to find out whether Mr. Badders was devoting his mind and his attention to this business that you and he were interested in there or whether he was looking after other things?

A. Why, as I said before I didn't think he was giving his time and attention to the business.

Q. Well, what was he doing?

A. I don't know.

Q. Was he in the store?

A. Part of the time.

Q. What part?

A. Sometimes in the morning and sometimes he was not; sometimes in the afternoon and sometimes he was not.

Q. Did you know what he was doing when he was out?

A. No sir.

Q. Are you a married man?

A. I am.

Q. Did you take your family to Topeka?

A. I did.

Q. Who else were stockholders at the time you were in this corporation?

A. Mr. Byers, my brother and Mr. Stone.

Q. Do you know what Mr. Badders' purposes were in not co-operating with you there in an attempt to build up this business?

Mr. Hite: Object to that.

The Court: Sustained.

Q. When Mr. Guggenheim came out to Topeka to talk with you and Mr. Badders about making this loan of seventy five hundred dollars to you, didn't he come there upon a telegram you sent requesting him to come?

A. Mr. Guggenheim did not come out there when the deal was closed.

Q. He wasn't there when that was done; do you remember of telegraphing Mr. Guggenheim on one occasion for him to come out there?

Mr. Hite: Unless it was the defendant that telegraphed Mr. Guggenheim I think it would be improper as to what Mr. Frankenstein telegraphed Mr. Guggenheim.

The Court: I don't think we will go into that; how does it become material how Guggenheim got there.

Mr. Robertson: Counsel in his opening statement—

The Court: I am talking about the legitimacy of this kind of testimony under this indictment.

Mr. Robertson: I don't think it has much to do with it except the statements made to the jury by Mr. Hite.

The Court: I don't care anything about the statements of counsel we are trying this case on the evidence before the jury and the charge in the indictment.

Mr. Robertson: The statement of counsel was——

The Court: I don't care what the statement of counsel was; it is not evidence before this jury.

Mr. Robertson:

Q. About these suits now that were sold; 550 suits for \$750, to the David August Clothing Company?

A. Yes sir.

Q. Just tell the jury about those suits, what they were?

A. They were an accumulation of about ten or twelve years, and I agreed to take that six hundred and fifty suits for one thousand dollars when I bought in, figuring what they were worth to me, that I could get that much out of the old stuff without any loss; I sold the 550 for \$750, and considered the one hundred I picked out were worth two dollars and a half apiece to the concern, to the Badders Company, and some of them were sold while I was in the business at a profit.

Q. They were stuff that had been practically discarded and thrown away, weren't they?

A. Yes.

872 S. R. BOYD, called as a witness on behalf of the defendant, having been first duly sworn, testifies as follows:

Direct examination.

Questions by Mr. Hite:

Q. I believe you stated on a previous occasion Mr. Boyd that you had become connected with the Badders Clothing Company during a sale that was had in 1911? Is that a fact?

A. Yes sir.

Q. State to the jury, if you know, how much that sale amounted to in cash sales?

A. I think it was sixty thousand dollars.

Q. State if you know what was the condition of the stock of clothing after that sale as to its being in good condition?

A. You mean——

Q. Had all the old stuff been sold out.

The Court: After you made the sale of the goods, what was the condition that remained after the sale was over?

A. In quantity or quality?

Q. Quality?

A. Mostly old stuff, stuff that had been there for years.

Q. Do you know whether any goods were purchased specially for that sale?

A. Yes sir, there were.

Q. What kind of goods?

Mr. Robertson: Objected to as immaterial, I think Your Honor, what was used in that sale.

The Court: Answer.

A. They were job lots of stuff.

Q. Clothing?

A. Clothing, no furnishing goods, and there was some clothing I think.

Q. Why wasn't more clothing bought? If you know?

Mr. Robertson: Objected to as immaterial.

The Court: Sustained.

Mr. Hite: Except.

873 Mr. Hite: Perhaps a word would indicate the line, it is a very brief thing; I only want to show the reason they didn't buy clothing was they had plenty of clothing and out of the other, clothing fit for that kind of a sale.

Mr. Robertson: Objected to as immaterial.

The Court: Answer.

Q. Is that the fact?

A. Yes, all the stuff we had in there was old and piled up in the basement; never had a sale in that store before; had lots of it.

The Court: And bought the new stuff so as to make a good sale?

A. Yes sir.

The Court: That is the end of that.

Mr. Hite: Do you recall the circumstances of the Felix failure in Topeka?

A. Yes sir.

Q. What business was Felix engaged in?

A. Clothing business.

Q. What if any effect did that failure have upon any purchases that had been made by the Badders Clothing Company?

A. Cancelled a bunch of stuff anticipating their putting on a sale.

Q. I don't believe the jury just understood that; explain a little more fully?

A. The Badders Clothing Company cancelled about fifteen thousand dollars' worth of their fall purchases anticipating the Felix sale.

Q. When you say anticipating the Felix Sale, do you mean some court sale or sacrifice sale?

A. We thought they were going to have a big sale like they did in Minneapolis, and Kansas City, ship in stuff and have a regular sacrifice sale.

Q. Did they have a sale?

A. They got tied up in the courts and couldn't have a sale and had to have a sale on what they had in their own store.

Q. Who conducted that sale?

874 A. Mr. Gilmore.

Q. Same people who conducted the Badderw Clothing Company sales?

A. Yes sir.

Q. State if you know whether there was much clothing in the store and offered for sale?

A. Not much.

Q. After the Felix sale state whether or not the Badders Clothing Company required more clothing for their regular business after these cancellations had been made?

A. We expected their *dale* to be larger and expected we wouldn't need so much stuff, and we couldn't do the business, but after their sale failed we figured we could have a sale.

Q. When was that conclusion reached as to having a sale?

A. A little while after Felix sale.

Q. And that was when?

A. In October.

Q. What character of goods did the Clothing Company require?

A. Stuff that we could sell at a price, at a low enough price to make it interesting.

Q. At that season of the year state how you would buy goods of that kind, as to the price that you would have to pay as compared with the price that you would have to pay for the same character of goods if they had been bought in the spring; if you understand the question Mr. Boyd?

Mr. Robertson: Object—

The Court: I guess what you are trying to find out is as to whether he could buy the goods cheaper in the fall or spring.

Mr. Hite: Yes, Your Honor.

The Court: Answer the question?

A. Yes, you can.

Mr. Hite: Is that particularly true of the character of goods the Badders Clothing Company required for that sale?

A. Yes sir.

Q. I understand you to say in your former testimony, Mr. Boyd, that you and Mr. Badders went east to buy goods?

A. Yes sir.

875 Q. And left Topeka early in November, is that true?

A. Yes sir.

Q. And that you went to Rochester New York and talked some with Mr. Guggenheim and then went down to New York.

The Court: Well, that has all been gone over.

Mr. Hite: That is why I make these suggestions, to get him to the point I want to make.

Q. While you were in New York did you and Mr. Badders visit the house or concern of Cohen & Lang?

A. Yes sir.

Q. Did you or did Mr. Badders in your presence leave any order with anybody in Cohen And Lang's for twenty six or twenty seven hundred dollars' worth of goods?

A. I don't remember of buying anything there at all.



Q. At that time were you present at any conversation that was had between Mr. Lang and Mr. Badders.

A. No, Mr. Seligman.

Q. Mr. Seligman and Mr. Badders?

A. Yes sir, I was sitting in the same room.

Q. Did you hear what that conversation was?

A. Most of it.

Q. Did you at that time hear Mr. Seligman say anything whatever about an order that had been placed the day before by Mr. Badders amounting to \$2,600.; was anything of that kind said by Mr. Seligman in your presence?

A. No sir, he asked him something about his account, or something like that; it wasn't about any orders that were placed there.

Q. What were they talking about Mr. Boyd?

A. I went up to see Mr. Cohen I think and Mr. Seligman said he would like to speak to Mr. Badders and they sat down and talked about the concern and about Mr. Badders' account with them, and I think Mr. Badders said he would send them a check immediately upon his return to Topeka.

Q. Do you know whether that check was sent?

A. I think it was, I couldn't tell, I just think it was.

876 Q. Was there anything said there in your presence in that conversation about any order being placed at all?

A. I don't remember of any.

Q. You would have heard it Mr. Boyd if there had been any such talk as that?

A. I would sir.

Q. That is what you were in New York for, was it not?

A. Yes sir.

Q. Now on that visit were either you or Mr. Badders looking around to buy any pants?

A. No sir.

Q. Did you buy any pants on that trip?

A. No sir.

Q. Mr. Boyd did you hear Mr. Badders say anything to Mr. Seligman, in substance, to the effect, that the increase in capital stock had been paid up in cash?

A. I didn't hear him say anything about it.

Q. With what house is Mr. Seligman connected?

A. Cohen and Goldman.

Q. Cohen and Goldman?

A. Yes sir.

Q. When you were in New York did you go to Cohen & Lang's place?

A. I think we did yes sir.

Q. Did you go with Mr. Badders?

A. Yes sir.

Q. Now on this trip Mr. Boyd did you and Mr. Badders go to these wholesalers together?

A. Yes sir.

Q. You looked at goods together?



A. Yes sir.

Q. When you went to Cohen & Lang's place did you meet a Mr. Lang there?

A. No sir.

Q. Did Mr. Badders in your presence have any conversation with Mr. Lang in Cohen & Lang's in which Mr. Lang asked him whether or not he could pay for the goods in thirty days? Or ten  
877 days or anything of that kind?

A. I don't remember them having any talk about it.

The Court: Says he don't remember having any conversation about it with Mr. Lang.

Mr. Hite: This is another place from Cohen & Goldman, Mr. Lang is connected with Cohen & Lang, as I understand it; I want to get the conversation Mr. Levy says he overheard.

Q. Was there anything said in your presence in regard to any such matter as that between Mr. Lang and Mr. Badders?

A. No sir.

The Court: Says it was not.

Mr. Hite:

Q. Now, with reference to the general character of goods that were purchased on that trip Mr. Boyd, state to the jury what they were as to being job lots or what are called close outs?

A. They are what is left over, at the end of the season, and the merchants anticipating reorders he makes up some clothing and some people cancel their orders, or send back some they don't like; the retail merchant cancels something on his order and sends it back, and they get a little goods on hand at the end of the season.

The Court: Was that the character of goods you were there to buy?

A. Yes sir.

Mr. Hite:

Q. Are they purchased more cheaply than the same quality of goods could be purchased in the spring?

A. Yes sir.

Q. Mr. Boyd I wish you would tell the jury what Mr. Badders' practice was in reference to being in the store during 1912 and 1913, was he there most of the time?

A. I don't know how much he was there.

The Court: You are now asking him to give a statement—

Mr. Hite: Of whether Mr. Badders was in the store most of the time.

The Court: That for the purpose of contradicting the testimony of the last witness introduced by you?  
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Mr. Hite: Just asking the witness to tell us whatever the fact is.

The Court: The question was asked of the other witness, who was your witness, and now you are asking this man.

Mr. Hite: It might be this man would say the same thing, I am sure I don't know what it is.

The Court: Well, ask him?

A. Well, he was there I think every day.

Q. Do you know whether or not Mr. Badders opened and closed the store every day?

A. He opened one week and Ike generally opened the next week.

Q. How was that?

A. He opened one week and Mr. Frankenstein opened the next.

Q. In the morning?

A. Yes.

Q. Mr. Boyd, after this sale of 1913 had been put on, do you know of anything that Mr. Badders did looking towards a continuance in business after the sale?

Mr. Robertson: Objected to as immaterial and irrelevant?

The Court: Answer.

A. You mean after the sale.

Q. Anything that Mr. Badders did looking to remaining in the clothing business?

Mr. Robertson: Objected to as calling for the conclusion of the witness.

A. He got fixtures and stuff.

Q. You do know of something that he did?

A. Yes.

Q. What was that?

A. He got fixtures for the store and for the windows.

Q. What store?

A. Figured on using the south room, going to rent the north room and—

Q. State, if you know, to whom the north part of the place was going to be rented after this sale?

A. United Cigar Company.

879 Q. You know whether any fixtures had actually been ordered?

A. You mean the United Cigar Company?

Q. No, for the south part?

A. Yes sir.

Q. What were they?

A. Either the fixtures for the whole thing—

Q. And for the inside of the store?

A. Yes, so you could carry the same amount of stock in smaller space, more up to date fixtures.

Q. State, if you know, what effect that change would have had upon the expenses?

A. Cut the rent down three hundred dollars a month.

Q. What if any effect would it have had upon the business location, if you know?

A. Well, we thought it would give us a better front than the

front we did have, with the stairway between the two doors, figured on half of the front, and that would give us a better front for a clothing store.

Q. Do you know whether Mr. Badders about that time, in the fall and winter of 1913, was negotiating with the landlord of the building and the United Stores Company looking to carrying out that change, do you know that?

A. Yes.

Mr. Robertson: Objected to as calling for the conclusion of the witness, not the best evidence, immaterial.

The Court: Overruled.

A. I saw them talking together about it and Mr. Badders would tell me what they said and stuff like that.

Q. Now Mr. Boyd right at that same time state whether or not Mr. Badders had ordered any spring goods?

A. Well, the early part of the fall we did.

Q. How early?

A. Well, when the travelling men first came around with spring stuff.

Q. And when would that be?

A. In September.

Q. And from that time on?

880 A. Well, up towards the latter part we didn't.

Q. Do you know of an order being placed by Mr. Badders for spring goods with the Michael-Stern people for the spring now of 1914 I am speaking of?

A. I think there was, I don't remember.

Q. Now is it not a fact Mr. Boyd, to refresh your recollection about this order, is it not a fact that orders were placed with the travelling men in the fall of 1913 for goods for the spring of 1914 in the regular way?

Mr. Robertson: Objected to as cross examination of his own witness; and leading.

The Court: I suppose the object is to show the man intended to go on with his business.

Mr. Hite: That is the whole purpose.

A. Yes, things were bought that way.

Q. Was there any difference in the way those goods were bought from the way they had been bought in previous falls?

A. No.

Q. What were the terms of purchase discussed between Mr. Badders and the wholesalers in New York when you and he were there in the east buying goods?

Mr. Robertson: Objected to as indefinite and uncertain.

A. We talked it over before we went there and he told them once when we bought the stuff he wanted to buy the stuff on thirty day's time.

Q. Do you recall the circumstances of buying goods from Leopold, Solomon & Isengraft?

A. Leopold, Solomon & Isengraft?

Q. Leopold, Solomon & Isengraft; how were those goods invoiced as being sold at invoice price?

A. They were sold at their wholesale price less thirty three and one third per cent discount.

Q. State if you know Mr. Boyd how the Lipps Bros. goods were sold?

A. I think net ten, thirty extra.

Q. What does that mean?

A. That means that you get thirty days after ten days' time and pay your face value of your invoice.

Q. When does the ten days begin to run with reference to the delivery of your goods?

A. When you get your shipment.

Cross-examination:

Mr. Hite: I only want to say, there is a character witness here that will take two or three minutes, if the United States Attorney will permit this interruption.

The Court: Well, with the talk you had there in the Chambers I am going on.

Mr. Hite: I will not make the request.

The Court: I don't propose to sit here all night unless I do it for a purpose.

Questions by Mr. Robertson:

Q. Have you looked up recently Mr. Boyd the dates when these cancellations of the 1913 fall orders were made?

A. I don't remember the date, it was in the summer time, along I should say in July, I think.

Q. Wasn't it in June?

A. I don't remember, it was summer time, I know, I can remember doing that.

Q. The Felix folks tried to have their sale in October?

A. Yes sir, but we knew before—they put the sale on in Minneapolis and in Kansas City and we knew they was going to have one there, we didn't know just when they were going to have it.

Q. Who suggested these cancellations?

A. I think Mr. Badders did.

Q. Now about these fixtures Mr. Boyd; isn't it a fact these fixtures that you speak of are fixtures that were never delivered to your house there, or the Badders Clothing Company house?

A. We got the window fixtures.

Q. Wasn't they sent out by a firm that retained the title, if you now about that, themselves.

A. We got the window fixtures but the inside fixtures didn't come.

Q. Do you know about that part?

A. I think they stopped them.

Q. Don't you know as a matter of fact that the Fixture Company have the fixtures yet? They held the title to them, and they were ordered in June, besides, weren't they, or May, which was it?

A. Sometime in there.

Q. And it is a fact, known generally to the trade, that new fixtures had been ordered for the store, wasn't it, at least they expected to get them?

A. Yes, we knew it.

Q. Yes; and the different salesmen that came there to the store from the different wholesale houses, they were apprised of it, were they not?

A. I don't remember.

Q. Well, they knew it?

A. Probably did.

Q. Did you order any spring goods on that trip to New York?

A. No sir.

(Witness excused.)

RICHARD HAYDEN, called as a witness on behalf of the defendant, having been first duly sworn, testifies, as follows:

Direct examination.

Questions by Mr. Hite:

Q. Where do you live Mr. Hayden?

A. Topeka, Kansas.

Q. How long have you lived there?

A. Sixteen or seventeen years.

Q. You were at one time probate judge of that county, were you not?

A. I was.

Q. For how many terms?

A. Three.

Q. Are you acquainted with the defendant George S. Badders?

A. I am.

Q. How long have you known him?

883 A. I presume about ten or twelve years, first when he was elected secretary of the commercial club.

Q. Mr. Hayden are you acquainted with the general reputation of the defendant, George S. Badders, in the community where he lived there in Topeka, among his neighbors, friends, and associated, during the period you have known him and prior to Christmas, 1913, for honesty, integrity and good character?

A. I am.

Q. State what that reputation was during the period I have indicated?

A. It was good.

## Cross-examination.

Questions by Mr. Robertson:

Q. Did you at that time, Christmas, 1913, know anything about the circumstances that cropped out in this case?

A. None whatever.

Q. Nothing whatever. Did you know anything about the claimed mortgage of the defendant to the Commercial Club at the time he hired from it?

Mr. Hite: Object to that Your Honor, as not proper cross-examination.

The Court: I don't think it is; we may not go into those matters. The witness states he knows nothing about certain things prior to that time, or anything connected with this concern in the month of December, or November, of 1913.

A. Well, Your Honor, when I answered that question I took it to mark the time of the present trouble that he is on trial for.

The Court: Well, do you know of any transaction in that business that occurred in the month of November and December?

A. I have absolutely no independent recollection of it Your Honor.

Mr. Robertson: Or prior to it.

A. No, I have no recollection.

Witness excused.)

The Court: So that you may be advised of the progress of this trial, you are a part of the court and should be advised, during the recess that was taken, defendant's counsel state- it would be an accommodation to them if there be no night session, and that they have one witness more they would put on tomorrow morning, if the court would indulge them; and I agreed to do that; so you know why the court is not in session at seven o'clock as heretofore; I think it is fair to you to be apprised of all that is going on. You may adjourn court until nine thirty tomorrow morning.

(9:30 a. m., Friday morning, Jan. 29, 1915.)

Mr. Hite: Like to inquire of the clerk, Your Honor, if the deposition taken in Topeka yesterday has been filed.

The Clerk: Yes, here it is. (Opening same.)

Mr. Hite: Like to have the clerk, Your Honor, identify the paper produced on yesterday might be put in.

L. CAMPBELL, called as a witness on behalf of the defendant, having been first duly sworn, testifies as follows:

## Direct examination.

Questions by Mr. Hite:

Mr. Campbell, you are the deputy clerk of this court, are you

I am.

I now hand you a paper and ask you if that is a duplicate

copy of the petition in bankruptcy filed in this court against George S. Badders individually?

A. It is.

Mr. Hite: We offer the paper in evidence and ask that it be marked Exhibit No. 103.

Mr. Hite:

Q. Mr. Campbell, please examine the file mark on that paper and state when that petition was filed?

A. It was filed on March 5, 1914 at 4:45 P. M.

885 (Witness excused.)

Mr. Hite: Reading Exhibit No. 103. (A copy of Exhibit No. 103 is attached hereto and made a part hereof.)

Mr. Hite: We offer in evidence the deposition of John R. Mulvane, taken at Topeka, Kansas, on yesterday morning.

Mr. Robertson: It does not seem to bear any date Mr. Hite.

Mr. Hite: It was placed on file this morning. (Reading same.) The deposition is as follows, to wit:

In the District Court of the United States for the District of Kansas,  
First Division.

No. —.

THE UNITED STATES OF AMERICA, Plaintiff,

v.

GEORGE S. BADDERS, Defendant.

Deposition of witness taken to be used in an action in the above entitled court wherein the United States of America is plaintiff, and George S. Badders is defendant. Plaintiff appeared by L. S. Harvey, its attorney, and defendant appeared by C. E. Gault, his attorney:

And thereupon it was agreed by said attorneys in behalf of said parties that notice of the taking of this deposition is hereby waived. It is further stipulated and agreed by and between the plaintiff and the defendant, that in order to save time, all objections which might be made to the questions and answers of the witness at the taking of this deposition, may be made in court at the time they are read in evidence.

L. S. HARVEY.

C. E. GAULT.

And thereupon the said defendant produced as a witness JOHN R. MULVANE, of lawful age, who being first duly sworn, deposeth and sayeth:

Direct examination.

886 Questions by Mr. Gault:

Q. State your name and residence?

A. John R. Mulvane, Topeka, Kansas.



Q. How long have you lived in Topeka?

A. Since 1868.

Q. In what business are you engaged?

A. In banking since 1870.

Q. With what bank are you now connected and in what capacity?

A. Bank of Topeka, President.

Q. Do you know the defendant George S. Badders?

A. Yes.

Q. How long have you known him?

A. Oh, about ten years.

Q. Do you remember the circumstance of his embarking in the clothing business in Topeka some years ago?

A. Yes.

Q. Did he discuss with you his plans with reference to embarking in that business before he did so?

A. Yes, he did.

Q. Do you remember the conversation or conversations had with him at that time?

A. He expected to put up a capital of \$25,000.00 for the conduct of the business.

Q. Did he discuss with you the question as to whether you would assist him from time to time with credit?

A. Yes. We agreed to give him a reasonable line of credit.

Q. Did you from time to time while he was in charge of The Badders Clothing Company, extend to that company a line of credit in behalf of the Bank of Topeka?

A. We did.

Q. Do you remember how long he was in the clothing business in Topeka?

A. No, I don't.

Q. Were the transactions between the bank of Topeka and George S. Badders satisfactory up to the time of the beginning of an action in bankruptcy about a year ago?

A. I think they were.

887 Q. Did you keep yourself informed as to the assets and liabilities of the Badders Clothing Company and of George S. Badders, during the time you were transacting business with them?

A. As far as we could.

Q. Mr. Mulvane, assuming that in the year 1913 the outstanding capital stock of the Badders Clothing Company, was \$35,000, and that the company at that time was solvent, and that at least ninety per cent of the stock of the company was owned by George S. Badders, and further assuming that the capital stock of the company was increased at that time \$25,000.00, and that the consideration for the issuance of said increase of stock, consisted of a note signed by George S. Badders, and secured by the stock representing said increase, and also by all of the stock theretofore issued standing in the name of George S. Badders, the same being at least ninety per cent of the outstanding stock, and The Badders Clothing Company, in these circumstances had asked you for credit, and offered you as collateral the note of George S. Badders, for \$25,000.00, secured as I have



described, would you have extended to them credit on the strength of that security, and if so, how much?

A. We would have extended credit, perhaps \$10,000.00. and considered it reasonable collateral.

Q. This in addition to credit already extended to the company?

A. Yes.

Mr. Harvey:

Q. Mr. Mulvane, when did Mr. Badders go into the clothing business, if you know?

A. I don't know.

Q. You don't remember? You say you remember of a conversation you had with Badders at the time he went into the clothing business in which you agreed to extend him a reasonable line of credit?

A. Yes.

Q. Do you know about when you had that conversation?

888 A. That must have been when he was discussing going into the business.

Q. How much credit did you extend to him at that time?

A. I am not sure, but I think about \$5,000.00.

Q. Was that before the Badders Clothing Company was organized?

A. No, I think not. I think it was after.

Q. Badders had been in the clothing business prior to the organization of the Badders Clothing Company?

A. I think not.

Q. Mr. Badders' first venture in the clothing business was at the time of the failure of the Robinson, Marshal Clothing Company?

A. I think so.

Q. And the \$5,000.00 your bank loaned him at that time was for the purpose of purchasing the stock with which he began business at that time?

A. I think it was for the commencement of his business, or rather the aiding of the commencement of his business.

Q. As I understand you, Mr. Mulvane, you say you kept yourself informed as to the assets and liabilities of George S. Badders and of The Badders Clothing Company?

A. Well, reasonable information, such as is ordinarily current in business.

Q. How did you get that information, concerning the condition of Mr. Badders and the clothing business?

A. Usually from him.

Q. Did he furnish you with written reports at regular intervals as to the financial condition of his business?

A. I could not tell you whether he did or not, now, without looking it up.

Q. Whatever report you had concerning the financial affairs of Mr. Badders and his business was furnished you by Badders, was it?

A. Yes sir.

Q. Did any of the officers or directors of The Badders Clothing

Company ever furnish you any statement of the financial condition of The Badders Clothing Company?

889 A. I think not.

Q. Mr. Mulvane, in answering Mr. Gault's question in which he assumed that in the year 1913 the outstanding capital stock of The Badders Clothing Company was \$35,000.00, and that the company at that time was solvent, and that at least ninety per cent of the stock of the company was owned by George S. Badders, and further assuming that the capital stock was increased at that time, \$25,000.00, and that the consideration for said increase of stock, consisted of a note signed by George S. Badders, and secured by the stock representing said increase, and also by all of the stock theretofore issued standing in the name of George S. Badders, the same being at least ninety per cent of the outstanding stock, and The Badders Clothing Company, in these circumstances, had asked you for credit, and offered you as collateral the note of George S. Badders, for \$25,000.00, secured as described, you would have extended credit to perhaps \$10,000.00, and considered it reasonable collateral? Now, Mr. Mulvane, I will ask you that if at the time the defendant gave the note for \$25,000.00 in question that if the Badders Clothing Company was at that time badly involved financially, and that Badders as its President and managing officer, was intending to incur large additional liabilities, so that at that time the said company was in debt to its creditors \$85,000.00, would you say that the company in those circumstances — to a \$10,000.00 credit on the note with no other security than the stock representing the amount of the increase?

A. We are presuming that the company had \$35,000.00 paid in capital, and was in good condition; such a loan would have been justifiable.

Q. In answering Mr. Gault's question in the circumstances you suppose, you base your answer then upon what Mr. Badders had told you with reference to the financial affairs of his company?

A. I base my answer on the company being solvent and having \$35,000.00 paid in capital.

890 Q. Mr. Mulvane, do you know of any property owned by George Badders, at the time he made this note of \$25,000.00 that would justify credit of \$10,000.00 or any other sum?

A. If the concern was solvent and had \$35,000.00 capital, that would justify a loan. I don't know of his having any other property.

Q. Was you ever a stockholder, Mr. Mulvane, in the Badders Clothing Company?

A. No sir.

Q. Mr. Mulvane, do you know that at the time George Badders gave this note for \$25,000.00, that he owed the German-American State Bank of Topeka, a note of \$5,000.00, and that the note had been put in judgment, and had not been collected?

A. I know nothing about it.

Q. Do you know that at the time Badders gave this note for \$25,000.00 that he personally owed the Stein-Bloch Clothing Company, of Rochester, New York, approximately \$7000.00?

A. I know nothing whatever of it.

Q. Did you know that at the time Badders made this note \$25,000.00 that he claimed to be in debt to his father-in-law W. Byers, in a sum variously given at \$11,500.00 to \$16,500.00?

A. Know nothing about it whatever.

Q. Assuming, Mr. Mulvane, that George S. Badders and The Badders Clothing Company, was in debt to the amount I have indicated and owed other large amounts to wholesale houses, at the time he increased the capital stock of his company for which he executed a note for \$25,000.00, would you still say that at that time he would be entitled to a credit of \$10,000. and that the stock of the company would be reasonable collateral as security for such credit?

A. With knowledge of those facts, I would not.

Q. I believe that's all.

Redirect.

Mr. Gault:

Q. Mr. Mulvane, during the time the Badders Clothing Company was in business in this city, did you consider that the ownership of a majority of the stock in that company would entitle the owner to a reasonable credit on his own account?

A. I would.

(Signed)

J. R. MULVANE

I, C. L. Cushing, Notary Public within and for the County of Shawnee in the State of Kansas, do hereby certify that the above named John R. Mulvane, the witness whose name is subscribed to the foregoing deposition, was by me first duly sworn to testify to the truth, the whole truth, and nothing but the truth, in the case aforesaid, and that the deposition by him subscribed was reduced to writing by me and that the said deposition was so reduced to writing and subscribed by the respective witness in my presence; and the same was taken on the 28th day of January, A. D. 1915, between the hours of 8 o'clock A. M. and 6 o'clock P. M. of said day, and at the office of Mulvane & Gault in the Town of Topeka in the County of Shawnee and State of Kansas, and that I am not an attorney for either of said parties.

[SEAL.]

C. L. CUSHING,  
Notary Public.

My commission expires April 10, 1915.  
(Documentary Revenue Stamp.)

(Endorsed:) # 4160. Filed January 28, 1915. Morton A. Baugh, Clerk.

892 GEORGE S. BADDERS, called as a witness on his own behalf, having been first duly sworn, testifies, as follows:

Direct examination.

Questions by Mr. Hite:

Q. Mr. Badders, you are the defendant in this action?

A. Yes sir.

Q. Where do you live Mr. Badders?

A. Topeka, Kansas.

Q. Whereabouts in Topeka?

A. 1160 College Avenue.

Q. How long have you lived in Topeka?

A. I have lived in Topeka all my life except five weeks; I came from Leavenworth, so I am told, when I was five weeks old, and I lived in Denver about three years. With that exception I have lived in Topeka the balance of the time.

Q. Where did you go to school Mr. Badders?

A. At Topeka.

Q. Go to the High School?

A. Yes sir, I went through the common school and high school.

Q. Ever been to college?

A. I took a little college work at Washburn College in Topeka, and I took the law course at the Washburn Law School, at the time they started the school I went to night school.

Q. What business did you engage in first Mr. Badders?

A. After leaving school.

Q. Yes.

A. After leaving high school I was clerk in the superintendent's office of the Rock Island Railway for a couple of years, before going to college.

Q. Then what did you do?

A. After leaving college?

Q. Yes, after leaving college?

A. I went to Denver and was in the law office of Rogers, Cuthbert and Edes.

Q. As a clerk?

893 A. As a clerk and in the collection department.

Q. Then what did you do?

A. Then I was, after leaving their employment, I practiced, handled collections of various kinds on my own account for about a year having my headquarters in Denver.

Q. Well when you come back to Topeka what did you do?

A. While I was engaged in my occupation at Denver, on one of my trips through Topeka I was asked by the President, W. W. Mills, of the Commercial Club, and three honorable secretaries, as they called themselves, to accept the secretaryship of the Topeka Commercial Club.

Q. Did you then become Secretary of the Topeka Commercial Club?

A. Soon after that I considered the proposition and accepted it.

Q. How long did you occupy that position?

A. About three years.

Q. Until what time?

A. Until about November 1911.

Q. Are you married, Mr. Badders?

A. Yes sir.

Q. This is your wife here in the court room?

A. Yes sir.

Q. When were you married?

A. I was married September 10, 1913, 1912.

Q. Have you any children?

A. Yes sir.

Q. How many?

A. I have one daughter.

Q. How old is she?

A. She is a little over a year old, a year the first of January.

Q. Born the first of January 1914?

A. Yes sir.

Q. Mr. Badders do you know of the Robinson Marshall Clothing Company concern formerly in existence in Topeka?

894 A. Yes sir.

Q. How long had that been in existence in Topeka?

A. The Robinson Marshall Company was organized by Mr. Robinson and Mr. Marshall, formerly clerks in the Palace Clothing Company about ten years before I became interested in the business.

Q. Where was their business store?

A. At Seventh and Kansas Avenue; originally it was next the corner, but later they enlarged the room and occupied both the room adjoining and the room on the corner making fifty foot.

Q. What do you say Mr. Badders as to that location?

A. It is the best location for a retail store in the city of Topeka.

Q. While you were secretary of the Commercial Club did one of the Robinson and Marshall firm die?

A. Yes sir, Mr. Marshall.

Q. Did the business then continue?

A. Well, yes, it continued.

Q. Who was it carried on by?

A. It was carried on for a short time by Mr. Robinson, the surviving partner, but he sold out to Mr. Marshall's widow, and she, at practically the same time she bought out Mr. Robinson's interest transferred her interest to a man by the name of Andrews, T. W. Andrews.

Q. While you were a member of the Commercial Club did you contemplate in any way going into the merchandising business?

A. Well I had my eye on this corner all the time I was secretary.

Q. Now, after you had formed that purpose did you have a talk with a banker in Topeka with reference to the matter?

A. Yes sir.

Q. Who was that?

A. I had a talk with John R. Mulvane before I embarked in the business.

895 Q. Mr. Mulvane, President, of the Bank of Topeka?

A. Yes sir.

Q. State, Mr. Badders, as to who Mr. Mulvane is, as with reference to being a prominent banker?

A. Mr. John R. Mulvane is President of the Bank of Topeka which I have always considered and now consider the strongest bank in the State of Kansas.

Q. Did you ask Mr. Mulvane's advice with reference to going into business?

A. Yes sir.

Q. Had you at the time that you talked with him ever had any experience in the retail business of any kind?

A. None whatever except as a clerk occasionally while I was attending school.

Q. Did you know anything about the clothing business?

A. No, except as stated.

Q. How old were you then Mr. Badders?

A. When I embarked in the clothing business?

Q. When you had this talk with Mr. Mulvane?

A. Twenty nine.

Q. Did you in that conversation make known to Mr. Mulvane that you didn't know anything about the business?

A. Well, he knew that, and I also admitted it to him.

Q. Well was it your plan at that time to secure anybody to go in with you that did know something about the business?

A. Yes sir.

Q. Was that matter discussed with Mr. Mulvane?

A. Yes sir.

Q. And about when in 1911 was that Mr. Badders?

Q. That was the latter part of October, the middle or latter part of October, 1911.

Q. Did you discuss with Mr. Mulvane the question of financial backing?

A. Yes sir.

Q. At the time Mr. Badders did you have any savings or resources of your own?

A. Well, only such as I had saved from my work while attending school and my work in Colorado.

896 Q. Well, how much did you have at your disposal so that you could start in some business?

A. You mean personally, not speaking of credit?

Q. Not speaking of credit?

A. About five thousand dollars, that is all you are speaking of?

Q. Yes, I am speaking of liquid assets?

A. Yes.

Q. Did you ask this banker that you speak of as to whether or not you could have any financial assistance if you did embark in this business?

A. Yes sir.

Q. And did you receive any assurance in that respect at all?

A. Yes sir.

Q. What assurance did you receive?

A. Well would you like to have me state briefly the conversation?

Q. State briefly, Mr. Badders, about how much financial assistance you were promised?

A. I told Mr. Mulvane I would need at least fifteen thousand dollars, that was my understanding of what I would need at the start.

Q. Had you at that time had any negotiations looking to the purchase of this store?

A. Well I had kind of familiarized myself with the condition the store was in but I had entered into no active negotiations for the purchase of it.

Q. After you had this talk with the banker what did you do?

A. I went to Rochester, New York.

Q. How did you happen to go there?

A. I went there to see Louis N. Stein.

Q. Who is Louis N. Stein?

A. President of the Stein-Bloch Company.

Q. How did you happen to go to see him?

A. Well I met Mr. Stein when I was secretary of the Commercial Club and while attending a National Association of Commercial Club Secretaries about a year and a half prior to that  
287      time in Rochester; I met him at the Seneca Hotel.

Q. You knew who he was from that meeting?

A. Yes sir.

Q. Did you have a talk with Mr. Stein about securing some expert clothing man to go in with you?

A. Yes sir.

Q. Did he in that conversation recommend anybody to you?

A. Yes sir.

Q. Who was it?

A. I. J. Frankenstein, Isaac Jacob Frankenstein, his full name.

Q. Did he in that connection say anything about a Mr. Frankenstein that was in the service of the Stein-Bloch Company?

A. Yes sir.

Q. Well, just very briefly, what did he do about it?

A. Well, Mr. Stein, of course, knew nothing about the clothing situation in Topeka, and he asked to have the representative of his company who covered the Topeka territory to come down stairs.

Q. And who was that?

A. Harry J. Frankenstein.

Q. And in that conversation that then ensued, Mr. I. J. Frankenstein's name was brought into the matter as a partner for you?

A. Yes sir.

Q. Where did Mr. I. J. Frankenstein live at that time?

A. At Hillsdale, Michigan.

Q. Well, after that, Mr. Badders, did Mr. Frankenstein come to Topeka?

A. Yes sir.

Q. About when was that?

A. He come out to Topeka in October the first time.



Q. Of 1911?

A. Yes sir.

Q. And that was very soon after you had taken up this matter with Mr. Mulvane?

A. Yes, within ten days.

Q. Who was with Mr. Frankenstein when he came?

A. George Guggenheim.

Q. Had you known Mr. Guggenheim before that time?

A. Not until I met him at—no, I didn't meet him at Rochester, never met Mr. Guggenheim until he came to Topeka.

Q. Mr. Guggenheim and Mr. Frankenstein then go over this proposition with you?

A. Yes sir.

Q. Did you three make an investigation as to the condition of the proposition that you were looking at?

A. Yes sir. We spent three days investigating the stock of merchandise and the books and the condition of the business.

Q. Did you call in anybody to assist in making a statement from the books of the conditions there?

A. Yes sir.

Q. Who was that?

A. Mr. H. L. Rhodes of Topeka.

Q. An accountant is he?

A. Yes sir.

Q. Did he make a statement to you gentlemen, including Mr. Guggenheim, Mr. Frankenstein and yourself, of the condition he found in the books?

A. Yes sir.

Mr. Robertson: Counsel keeps calling for hearsay right along your Honor; I don't like to object, but seems to me it is not fair to object to it.

The Court: Go on.

A. Mr. Rhodes made an oral statement to us only from the books of the corporation which the then managing officers brought to the hotel, and he simply run through the books and answered our questions in regard to the financial condition of the company.

Q. Just briefly now Mr. Badders and concisely as you can, what did he give you gentlemen to understand was the condition of the business?

A. Well, they had a stock of merchandise—is that what you mean?

Q. The amount of inventory, resources or liabilities?

A. They had a stock of merchandise at this time of about ninety thousand dollars, might have been ninety-five; their liabilities were about from forty to forty-five thousand dollars, that was for goods purchased for the fall of 1911.

Q. This ninety thousand dollars you speak of is the amount of the stock of the inventory?

A. Yes sir.



Q. Mr. Guggenheim and Mr. Frankenstein say anything with reference to the character of the stock as to whether it was good or bad or not?

A. Yes.

Q. Well, briefly, what was it?

A. Mr. Guggenheim said that it was the worst stock of merchandise that he had ever seen in his thirty years' experience.

Q. Now the result of this conversation that you gentlemen had was what?

A. Well, we couldn't come to any agreement. Mr. Guggenheim was the principal negotiator with Mr. Andrews at that time and we couldn't come to any agreement with Mr. Andrews as to price; he wanted forty-five thousand dollars for the stock. He first wanted forty-eight thousand dollars but he dropped to forty-five and Mr. Guggenheim and Mr. Frankenstein considered that too high, that it couldn't be handled on that basis and they left.

Q. Now did you afterwards buy that business, Mr. Badders?

A. Yes sir.

Q. What was the purchase price?

A. Thirty thousand dollars and assumed their liabilities.

Q. And when was that?

A. I believe November 8, 1911.

Q. Then what did you do?

A. Put on a sale.

Q. About how long did that sale continue?

A. Six weeks.

Q. What was the result of it?

900 A. Why we reduced the stock to about, well we took it at fifteen thousand dollars, it was worth probably a little more than that, but we reduced it to fifteen thousand dollars.

Q. Who was in with you at that time?

A. Mr. Rinehart was associated with me during the fore part of the sale, I would say all during the sale.

Q. What interest did Mr. Rinehart have in the business?

A. He didn't have any personal interest in the business. Mr. W. S. Peck of Syracuse had put five thousand dollars in the business for him.

Q. And he had that much stock did he?

A. Yes.

Q. Did you have all the rest of the stock?

A. Yes.

Q. Now who were the directors?

A. The directors at the time I organized?

Q. No at the time you and Mr. Rinehart were operating this business?

A. Mr. Rinehart and myself, of course, and Mr. Robert Stone, a lawyer of Topeka, and W. A. Byers; I have forgotten who the fifth director was, there were five directors.

Q. Did these two gentlemen you have mentioned, Mr. Stone and Mr. Byers, have a real interest in the matter?

A. No.

Q. Their interest just nominal?

A. Just nominal, they had one share of stock each given to them to constitute them directors.

Q. Now after that sale was over Mr. Badders what did you do about paying the debts?

A. We paid the debts.

Q. Paid in full?

A. About forty-eight thousand dollars, in full, yes sir.

Q. Now before you embarked in that sale were there any purchases made for the sale?

A. Yes sir.

Q. What character of goods were purchased for that sale?

A. Well, we bought what we call close outs, cheap goods.

Q. Was it mostly furnishings?

A. It was mostly overcoats; we were provided on suits, in fact overprovided on suits, but we were short on overcoats, and it was chiefly cheap overcoats.

Q. At that time were you doing any business with Stein-Bloch?

A. No sir.

Q. Know whether their line was represented in Topeka?

A. Their line was represented by a small store on the east side, I have understood, in a small way, they didn't advertise the line, understood they carried some.

Q. Who was the chief competitor of the Robinson Marshall store?

A. The Palace Clothing Company.

Q. And who runs that?

A. Mr. Auerbach and Guettel.

Q. Where is their store room with reference to the Badders store?

A. It is in the same block, we were on the corner and they are out the middle of the block, they are fifty feet away from us, two rooms in between.

Q. Now did you correspond with Mr. Guggenheim during the time this sale in reference to what you were doing?

A. Yes sir, I advised him.

Q. Mr. Badders I hand you a paper marked Exhibit No. 59 and I ask you if that is a carbon copy of a letter that you addressed Mr. Guggenheim?

A. Yes sir.

Q. Was the original of that letter deposited in the United States mail properly stamped?

A. Yes sir.

Mr. Hite: We offer Exhibit No. 59 in evidence.

Mr. Robertson: No objection.

Mr. Hite reading Exhibit No. 59 to the jury.)

A copy of Exhibit No. 59 is attached hereto and made a part thereof).

Q. Mr. Badders I now hand you a paper marked Exhibit No. 60 and will ask you if that is a carbon copy of a letter sent by you to Mr. Guggenheim?

A. Yes sir.

Q. Was that letter put in the United States mail and properly stamped and addressed to him?

A. Yes sir.

Mr. Hite: Defendant offers in evidence Exhibit No. 60.

Mr. Robertson: No objection to it at all.

Mr. Hite: Reading Exhibit No. 60.

(A copy of Exhibit No. 60 is attached hereto and made a part hereof.)

Q. Mr. Badders I now hand you a letter marked Exhibit No. 61 and will ask you if that is a letter received by you from Mr. Guggenheim?

A. Yes, sir.

Mr. Hite: We offer in evidence Exhibit No. 61.

Mr. Robertson: All right.

(A copy of Exhibit No. 61 is attached hereto and made a part hereof.)

Q. Mr. Badders, after the correspondence did you have a further talk with Mr. Guggenheim and Mr. Frankenstein, and if so when and where?

A. They came out—well first I went back to Rochester, after the sale was over, but before I went back to Rochester Mr. Frankenstein came out during the latter part of the sale to see how things were going. I had kept him advised the same as I had Mr. Guggenheim and Mr. Stein during the progress of the sale, and the middle or latter part of December he came out to see me and see what the prospects were for his going into the business, and then after the sale was over I went to Rochester with a statement of what we had left after the sale and presented it to Mr. Guggenheim and he took up negotiations with Mr. Frankenstein and we consummated shortly after that a partnership arrangement.

Q. Now in that partnership arrangement Mr. Frankenstein acquired a half interest did he?

903 A. Yes sir.

Q. Did he get any money from the Stein-Bloch Company to do that with?

A. Yes sir.

Q. How much?

A. Seven thousand five hundred dollars.

Q. What collateral did he put up if you know?

A. He put up his stock in the company to that amount.

Q. Did Mr. Frankenstein and his family move to Topeka?

A. Yes sir.

Q. And he went actively into the business with you?

A. Yes sir.

Q. That would be, Mr. Badders, about when?

A. Well, that was about the latter part of January he came out, middle or latter part of January, and by the first of February we had perfected our arrangements and his advent into the business really dated from the first of February.

Q. Was there anything said in these talks between Guggenheim, Frankenstein and yourself with reference to using the Stein-Bloch Company as a reference?

A. Oh yes.

Q. Well what was it?

A. Well it was understood that we were to use them freely for credit purposes.

Q. Now at that time Mr. Badders state what the condition of the clothing stock was, of the Marshall Clothing Company, with reference to having any left overs or close outs on hand out of the Marshall Clothing Company's stock.

A. We had a pretty clean stock of merchandise upstairs, most of the old unsalable stuff, always a lot of that left after a big sale, and we took that to the basement or the first floor of the store.

Q. That consisted solely of suits?

A. Well, there were some shirts and odds and ends of underwear, but largely suits.

Q. What became of those suits?

904 A. They were sold to the August Clothing Company.

Q. About how much a suit did you get for them?

A. Well I think it was about \$1.27 a suit, between twenty five and thirty, as I remember.

Q. After that time the business went on for 1913 with Mr. Frankenstein associated with you and actively engaged in the business?

A. Yes sir.

Q. Did you at that time, at the time Frankenstein went into the business, get any goods from Stein-Bloch?

A. Yes sir, we bought from Stein-Bloch before coming out to Topeka.

Q. About how much did you buy?

A. Well at that time we bought over-coats for immediate shipment, fourteen hundred dollars' worth of spring overcoats, and about nine thousand dollars' worth of stock for spring 1912.

Q. Now who did the buying and the selecting?

A. Mr. Frankenstein.

Q. At that time Mr. Badders your only experience had been during this sale, is that a fact?

A. Yes sir.

Q. These matters of purchases were they left to Frankenstein?

A. That was understood in our agreement; he was to have charge of the hiring of the help and the purchase of goods.

Q. Now during 1912 did you see Mr. Guggenheim any more?

A. During 1912?

Q. Yes.

A. Well, if I did it was on my trips to New York; yes, I think I saw him in the fall 1912.

Q. Had you during that year used the reference to the Stein-Bloch company whenever you wanted to buy goods?

A. Yes sir, we didn't have occasion to refer to them a great deal, however, our credit was considered good.

Q. Were you in correspondence from time to time with the Stein-Bloch people?

A. Yes sir.

905 Q. Were there any arrangements with reference to furnishing daily reports of the business to the Stein-Bloch people?

A. Yes sir.

Q. Mr. Badders, I hand you this package and ask you to state what that package contains?

A. Well, that contains the daily reports that were sent to the Stein-Bloch Company.

Q. Well where did you get that package?

A. I believe Mr. Brady handed that to me.

Q. State if you know whether that is the package of papers Mr. Guggenheim brought out here?

A. Yes sir, I believe so.

Mr. Hite: Defendant desires to offer in evidence one of these papers merely for the purpose of showing the character of the report that was to be made. You have seen them Mr. Robertson. They are not offered for the detail, Your Honor, but merely to show the form. (Paper referred to identified as Exhibit No. 104. Read to the jury by Mr. Hite.)

(A copy of Exhibit No. 104 is attached hereto and made a part hereof.)

Q. Now Mr. Badders how long did you continue to send these daily reports to the Stein-Bloch Company?

A. These reports were sent up to some time in October as I remember, 1913.

Q. When was it Mr. Badders that Mr. Frankenstein and you discussed the matter of a separation between you?

A. Well, Mr. Frankenstein asked me if I would take over his interest the fore part of 1912.

Q. Well, what did you do then?

A. I told him that I would see if I could arrange to take his stock.

Q. Did you go to Rochester?

A. Yes sir.

Q. Did you have a talk with Mr. Stein or Mr. Guggenheim about the matter?

A. Yes with both of them.

906 Q. That was the purpose of your visit there, wasn't it?

A. Yes sir.

Q. Now while you were in Rochester did you receive a telegram from Mr. Frankenstein in regard to the matter?

A. Yes sir.

Q. What was the substance of that?

Mr. Robertson: Objected to as not the best evidence.

A. I think the telegram is an Exhibit Mr. Hite.

Mr. Hite: I think I showed it to Mr. Guggenheim and he didn't identify it so I don't believe it is Mr. Badders.

Question withdrawn.

Q. Well, after receiving a telegram from Mr. Frankenstein did you have a talk with Mr. Guggenheim or Mr. Stein with reference to Frankenstein's action?

A. Yes sir.

Q. What was the substance of that?

A. Well, that telegram——

Q. Never mind about that; I am asking now for the talk you had there?

A. The talk following the receipt of the telegram, really ought to have the telegram Mr. Hite in order to tell exactly what the talk was because it referred to the telegram. But Mr. Guggenheim asked me what I expected to do in reference to the contents of the telegram; I ought to state the contents of the telegram, may I do so?

Q. If you stated it to Mr. Guggenheim?

A. Oh yes, he saw the telegram, that telegram said, if you are unable to take my interest I will take yours.

Q. You said Mr. Guggenheim asked you what you was going to do about that?

A. Yes.

Q. Well then after you had this talk with the Stein-Bloch people did you go back to Topeka to see further about this matter between you and Mr. Frankenstein?

A. I went back to see what was the matter with Mr. Frankenstein because there was no idea whatever of his taking the store  
907 when I left Topeka; it was the understanding that I was to take his interest and there was no other arrangement made.

Q. Now did Mr. Guggenheim come out in the early part of 1913?

A. Yes sir.

Q. And what was done there Mr. Badders?

A. Mr. Guggenheim insisted upon the capital stock being raised ten thousand dollars and the ten thousand dollars being paid to him.

Q. Now I will ask you if this Exhibit No. 63 that has been offered in evidence here was a memorandum agreement made at that time with reference to the withdrawal of Mr. Frankenstein and the increase of the capital stock and the separation between you and Mr. Frankenstein?

A. I increased the capital stock ten thousand dollars as asked by Mr. Guggenheim and sent him the ten thousand dollars on the Stein-Bloch account.

Q. Now did you pay interest on the past due account?

A. Yes sir.

Q. Now Mr. Badders what is meant by this matter in this memorandum, Exhibit No. 63, "Stein-Bloch Company are to ship season's goods with one season's payment still due from the Badders Company," explain that to the jury?

A. Well, it means just what it says, they are to ship one season's goods while we are still owing for one season, which would mean that we would have two seasons' goods owing them; in other words, if we had the spring shipment of any one year in and not paid for,

they were to ship the fall of that year and we would be owing them for both the spring and the fall.

Q. Then when was the spring shipment in the case that you have mentioned to be paid for?

A. It would be sixty days after the fall shipment was in according to regular terms.

Q. That is, sixty days after the receipt of the goods?

A. Yes sir.

Q. When you say they were in——

A. Seventy days really, the terms were seven, nine, ten or  
908 seven, ten sixty extra.

Q. As I understand that phrase in the trade it means that you have at all events ten days after the arrival of the goods to pay for them in which event you get a certain discount for the prompt payment?

A. Yes sir.

Q. But that you may have sixty days after the ten day in which to pay for them, in which event you get a smaller discount?

A. Yes sir; and we had a further verbal arrangement, as heretofore brought out in the testimony, whereby we were to have such additional time as we needed and were to take our discount and pay interest.

Q. Now Mr. Badders that store was a Stein-Bloch store, was it not?

A. Yes sir, I considered it so.

Q. The Stein-Bloch Company put up any money to put a sign on that store?

A. Yes sir, they put up a large electric sign, Stein-Bloch Smart Clothes.

Q. Tell the jury what kind of a sign that was?

A. That was a sign extending from the top of the building, well, the awning almost touched it when the awning was raised, and I believe the largest electric sign in the city of Topeka.

Q. What did it have on it.

A. "Stein-Bloch Smart Clothes."

Q. How many stories in that building?

A. Three.

Q. Who paid for the sign?

A. Stein-Bloch paid for most of it.

Q. Who paid for the electric current?

A. We did.

Q. I notice your stationery Mr. Badders seems to be marked "Stein-Bloch Smart Clothes" headed something of that kind?

A. Yes sir.

Q. Was that done at the suggestion of Mr. Guggenheim?  
909 A. Oh I think not, it is customary for clothiers to put their leading line on their stationery.

Q. And that was the leading line of the Badders Company?

A. Yes sir.

Q. Now this ten thousand dollars you paid to Mr. Guggenheim on the general account, did you?



A. Yes sir.

Q. You purchased Mr. Frankenstein's stock in the matter?

A. Yes sir.

Q. As per this arrangement?

A. Yes sir.

Q. At whose suggestion was it that this change was made from a loan to Frankenstein to a loan to you

A. Well I asked Mr. Guggenheim if he would transfer the loan to me and he said he would; that was the result of the negotiations; at first he didn't want to, but he finally did.

Q. Now about when did Mr. Frankenstein cease to have any interest in the business?

A. Well it was about the time of the date of this agreement.

Q. Who were the directors there Mr. Badders during Mr. Frankenstein's connection with the business?

A. Mr. Frankenstein and myself, Harry J. Frankenstein, his brother, and his wife, I have forgotten her first name, and Robert Stone.

Q. Did either one of these three persons you have last named have a real interest in the business?

A. Did I name five?

Q. Yes.

A. There were five directors.

Q. I understand you said aside from yourself and Mr. Frankenstein there was Mr. Stone, Mrs. Frankenstein and Mr. Harry Frankenstein, is that right?

A. I am not sure about Harry Frankenstein being a director. I believe Mr. Byers was a director then, at least we were practically equally represented on the directors; I don't remember much about who were directors, they were merely nominal directors, they had no real interest.

910 Q. Mr. Badders are you able to say whether it is customary in such corporations to have these nominal directors to fill up the board?

A. Yes sir.

Mr. Robertson: Object to that as calling for conclusion and immaterial, Your Honor.

The Court: Answer.

A. Yes sir, it is customary where a man owns practically a controlling interest in the business to have nominal directors, that is always done.

Q. Now after Mr. Frankenstein went out was there anybody that had any interest in that business except yourself?

A. At the time of his leaving, no sir, I was the sole owner.

Q. Now Mr. Badders it is in testimony here that some transaction took place in the basement of the Badders Clothing Company. I wish you would give the jury a description of the Badders Clothing Company's place of business and this basement?

A. Well the Badders Clothing Company, as I have stated before, was on the corner of Seventh and Kansas Avenue, which is the cen-



ter of the business district, the National Hotel is across the street and two banks on the other two corners; the store has a fifty feet front and extends back one hundred and fifty feet. Seventh Street is a side Street and is an inclined street, so the rear of the Badders store would open out onto Seventh Street, that is, be practically on a level; the front of the Badders store would of course be underneath the surface of the street, that is, to a certain extent; there is an alley way on Seventh Street, a wide area way, about eight feet wide, and there were windows and doors leading from there in. Now in the back of this first floor as we called it, we didn't call it a basement, there were windows which looked right out on the street, back in the tailor room and in the pressing room.

Q. You mean the tailor and pressing room of the Badders Company?

A. Yes sir. Now the store itself, the front, was divided by a stairway about eight feet wide leading up to the upstairs, and 911 on the inside of the store underneath this stair way was a stairway leading down to the first floor, which has been referred to as the basement; on the first floor we kept our work clothes and overalls, and a few things like that, and it was a stock room surplus stock also.

Q. Were customers served down there on this first floor or basement?

A. Yes sir.

Q. Now Mr. Badders what was the office, tell the jury what the office consisted of?

A. Well the floor of the store proper extended back fifty feet wide about two thirds of the distance, or one hundred feet of the one hundred and fifty feet; then there was a slight rise of about ten feet leading up and from there you went back another fifty feet and that was what we called our children's Department; this Children's Department on this raised portion constituting the rear fifty feet wide only twenty five feet wide; the other twenty five feet on the Seventh Street side was occupied by real estate office; in other words, the whole was a corner out of our store on this raised portion, about twenty five feet wide and fifty feet long.

Q. Whereabout was this office and what did it consist of?

A. The office was right at the head of the stairs and before you got — the Children's Department.

Q. What did this office consist of, was it an inclosed room?

A. It was open in the front towards the store; there was a counter there for wrapping bundles and carriages for bringing in and sending out goods was all in there, and there was a glass partition over a portion of the south side of the office.

Q. Was the cashier's desk there and her department?

A. Yes sir.

Q. Was your desk in there?

A. Yes sir.

Q. What else was in there?

A. I say my desk, I really didn't have any desk, I had a table

and there was a typewriter table and typewriter; there was filing cabinets and there were some shelves for keeping books on.

912 Q. Now how much space would that office proper cover?

A. Well I should say it was about eight or ten by fourteen.

Q. Pretty well crowded or not?

A. Yes it was pretty crowded.

Q. Now Mrs. Burdick was in there or whoever was cashier, is that a fact?

A. Yes sir.

Q. And who else?

A. And the bookkeeper and bundle wrapper and myself whenever I was in the office, and also an assistant cashier at different times.

Q. Mr. Badders state what was the financial condition of the Badders Clothing Company in the month of May, 1913, as to its being solvent or otherwise?

A. It was perfectly solvent.

Mr. Robertson: Your Honor, I suppose that is a matter to be determined from the testimony.

The Court: Yes, he can state what it was. You may cross-examine him when you get to it.

Q. Was it in a good or bad condition as to having a flourishing business?

A. It was in good condition, fine condition.

Q. Now there is in testimony Mr. Badders a matter of you and Mr. Burdick and Mr. Boyd meeting there in the basement, so-called, of this first story, I think the Government calls it the basement, and that there was a meeting of the directors, so-called, of the clothing company in which there was a dividend of twenty five per cent declared on the capital stock and a commission voted to the President on sales over fifty thousand dollars, or such a matter, and an increase of five thousand dollars of salary, and I think also a commission to the secretary. I wish you would state to the jury what considerations induced you to bring about that matter, or have that done, if that is the fact?

A. Well, I had worked hard in building up this business, and had it in a good, sound financial condition, and was contemplating at that time, in fact had negotiations on for bringing another partner into the business. I had never drawn any commissions or dividends or anything of that sort from the business, and I felt that whoever came into the business should pay me for my services in building up that business, taking it under the circumstances in which I did and putting it on a sound financial basis, and these things were put on the books at that time so that whoever came into the business would know what I expected him to pay me for my services in building up the business.

Q. Was there a minute made of all these matters Mr. Badders?

A. Yes sir.

Q. And was that put into the minute book?

A. Yes sir.

Q. Mr. Badders I now hand you Exhibit for identification, No. 57,

and I will ask you to state whether the signatures appearing on the exhibit were placed there in your presence?

A. Yes sir.

Q. And are those the signatures of the men whose names appear on that paper?

A. They are.

Mr. Hite: We offer this Exhibit No. 57 in evidence. Before reading this, Your Honor, I would like to ask the witness another question or two.

Q. Referring to this matter of these dividends and commissions Mr. Badders, was it your purpose at that time to withdraw any of those sums from the business?

A. At that time?

Q. Yes sir.

A. No sir.

Q. Did you ever withdraw any of these funds?

A. Never.

Q. Did you ever Mr. Badders pay yourself or cause anybody in the Badders Clothing Company to pay you any of this money or commissions or dividends voted to you at that time?

A. Never, no sir.

Q. Did you ever receive it?

A. No sir.

914 Mr. Hite: Referring now to Exhibit No. 57. (Reading same to Jury. Reading heading. The words I have just read appear on each of three sheets and I will not repeat them unless counsel desires it.)

Mr. Robertson: That is the same list I read only you have the original.

Mr. Hite: Yes sir.

(A copy of Exhibit No. 57 is attached hereto and made a part hereof.)

A. Mr. Hite, I think not, there are a few additional names that do not appear on Mr. Robertson's list.

Mr. Hite: Then I will read this.

Q. Mr. Badders, I notice on this list the name of *of* W. E. Stephens had a pencil mark run through it; will you explain whether that was put on there afterwards or as to what that means as to that name and other names?

A. He took his stock but returned it and that applies to six, I believe on the list; they either didn't take it or after taking it wanted to resell it. Mr. Stephens left the city was the reason for returning his stock.

Q. Mr. Badders did you call on each of these gentlemen whose names I have read here with a view of selling them stock?

A. Yes sir.

Q. Did you have any difficulty in getting them to take the stock?

A. No sir.

Q. Some of these subscriptions were paid by note and some in cash, were they?

A. Yes sir.

Q. About when was that Mr. Badders?

A. Well, I don't remember the exact date it must have been about the latter part of April, 1913. Possibly the fore part of May, I don't remember the exact date. It took me of course a couple of weeks, I just got the fellows as I saw them to subscribe for the stock.

Q. Now at the time these dividends or so-called dividends and commissions were passed upon by this meeting, how much money were you drawing from the business?

A. Fifty dollars a week.

Q. Now at that time had you entered into an arrangement with Stein-Bloch looking to the payment of this debt that you had assumed?

A. Yes sir, I agreed to pay them one hundred dollars a month on their debt, that is, my personal debt you refer to?

Q. Did you pay that Mr. Badders?

A. Yes sir.

Q. Until when?

A. Why I believe my last payment was the first of October, 1913, might have been the first of November, but I think the first of October.

Q. Mr. Badders it is in testimony here that there was some failure there in Topeka, of Felix & Company; was that concern in the Clothing business there?

A. Yes sir.

Q. A competitor of the Badders Company?

A. Yes sir.

Q. How far away from the Badders store was the Felix store?

A. They were about five doors north, being the opposite direction from the Palace Clothing Company, that being south. They were in the next block, of course, we being on the corner.

Q. As I understand you, the Palace Company was between seventh and eighth on Kansas?

A. And Felix between Sixth and Seventh.

Q. On Kansas Avenue?

A. Yes sir.

Q. About when was that failure, just approximately?

A. Well you mean when the actual failure occurred?

Q. Yes, when it became known that they were—

A. Oh it was known for a year before they failed they were in failing condition.

Q. Mr. Badders state whether or not in the spring of 1913 or in the summer of that year the Felix Company's business was in the hands of trustees for creditors?

A. As I remember it was early summer.

Q. Of 1913?

A. Yes sir.

Q. Now did you receive any information that there would be a sale or contemplated sale of the Felix stock?

A. Well we didn't receive any information, our own business judgment told us there would be.

Q. Now prior to this failure, the actual failure now I am speaking of, had the Badders Company ordered its fall and winter goods?

A. Previous to the failure?

A. Yes?

A. Yes sir.

Q. After the failure what if anything was done by you and the company, or you, I guess it was, about these orders that you had placed for fall and winter stuff?

Mr. Robertson: I beg your pardon, I would like that question read.

(Question read.)

A. We went over our entire fall orders in anticipation of the Felix sale and cancelled heavily from our fall purchases.

Q. Mr. Badders I do not believe I understand you, possibly the jury does; when you say fall orders, do you mean orders placed in the spring for fall goods, is that what you mean?

A. Yes sir, we place our orders in February and March and sometimes as early as January for the next fall delivery.

Q. Well then these were fall goods and not fall orders, is that right?

A. Fall goods, yes sir; they were spring orders in the sense they were ordered in the spring for fall delivery.

Q. But were for fall and winter goods?

A. Were fall and winter goods for delivery in the fall.

Q. Now why did you cancel those orders Mr. Badders?

A. Well we didn't want the merchandise we had ordered on hand if Felix put on a big sale.

Q. What do you mean when you say cancelled, or that  
1917 there were cancellation of orders, just explain what you mean by that?

A. We took, for instance, we order one hundred suits of clothes from Stein-Bloch's; we would take out that order sheet and figure out say forty of the suits that we didn't need and would advise Stein-Bloch, or any other house, to not ship those forty suits; we would leave sixty of the original order standing.

Q. That is what you mean by cancellation?

A. Yes sir.

Q. Now did you cancel any of the Stein-Bloch goods?

A. We tried to.

Q. Well wouldn't they accept your cancellation?

A. No they were the only house that wouldn't accept.

Q. To your other people from whom you had ordered these fall and winter goods did you explain why you were making these cancellations?

A. To some we did and to others not, it usually is not necessary, the houses are courteous in that respect providing your cancellation

is made within a reasonable time after your original order is placed, in other words, if the manufacturer has not proceeded too far on the orders.

Q. But Stein-Bloch wouldn't accept your cancellation?

A. No sir.

Q. Did Felix and Company have a sale?

A. Yes sir.

Q. What do you say Mr. Badders, if you know, with reference to the Felix & Company's stock of clothing?

A. They had a very small stock of clothing; I believe they only had one hundred and thirty or forty overcoats; I went through the stock and counted the suits and overcoats before the sale.

Q. Was their sale a success?

A. Well it was a success from a furnishing goods standpoint, yes sir, and that was the principal sale.

Q. When was it Mr. Badders when you first determined the Badders Company would have a sale?

A. Immediately following the Felix sale.

Q. And when did that sale conclude?

18 A. I say immediately following, I would say during the sale we thought we could have a good sale because they were unable to ship in the merchandise they required for the sale.

Q. Now about when did the sale conclude?

A. I think it was ended in October, started the fore part of October and ended in October as I remember it.

Q. Now Mr. Guggenheim was out to Topeka in the last of October and the first of November was he not?

A. Yes sir.

Q. And it was at that time that this agreement was signed, referring now to Exhibit No. 35, is that true?

A. I would like to see it.

(Handing to witness.)

A. Yes sir.

Q. I would ask you Mr. Badders whether it was signed at that time, or whether the terms were substantially agreed upon before the date this bears?

A. The terms were not substantially agreed upon, that contract was forced upon me and was not signed until two or three weeks after Mr. Guggenheim was here.

Q. At the time Mr. Guggenheim was there in October, 1913, did you and he have any talk about the expense that the Badders Company was incurring on account of the large rent or large store room, or anything of that kind?

A. Yes sir.

Q. Tell the jury what that was?

A. Every time I would see Mr. Guggenheim we would talk over the overhead expense as we term it, that is, the expense of the conduct of the business, which would include rent and clerks and everything in connection with the running expenses of the business.

Q. Right there Mr. Badders why were you reporting all these details and matters of expense to the Stein-Bloch people?

A. Well because they were our heaviest creditor and also because they demanded it, and I thought they were entitled to the information, I might say, and for the further reason that I was trying to get Mr. Guggenheim to let me cut the store and reduce our expense.

Q. Did any other of your creditors or persons with whom you dealt make any of these demands on you for daily reports and reporting every small detail over the business?

A. O- no.

Q. Now you say you talked with Mr. Guggenheim about cutting the store in two or cutting out some of the store room and cutting down some of the expense?

A. Yes sir.

Q. Now what do you refer to.

A. I say cut the store in two, it didn't mean cutting it actually in two. I had arranged with the United Cigar Store Company to take a corner space out of the store, such as they usually occupy in corners in cities, extending back forty feet and extending twenty feet of the width of the store.

Q. Now how much were the United Cigar Store Company to pay rent for that piece cut out of your store?

A. Two hundred dollars a month.

Q. At that time what was the rent reserved by your lease to the Knights and Ladies of Security?

A. Five hundred dollars.

Q. What do you say, Mr. Badders, if that corner had been cut out about leaving the Badders Store room ample for its needs?

A. It would have been abundantly sufficient for the needs of the business.

(11:15 A. M., recess.)

Q. Mr. Badders, I call your attention to the following language in Exhibit No. 35; referring now to the agreement made between the Badders Company and yourself, on the one side, and the Stein-Bloch Company on the other, occurring on page 2, "It is further agreed by The Badders Clothing Company that the present status of the store lease and the store building at the street number 701 and 703, Kansas Avenue, Topeka, Kansas, is not to be changed, or said lease assigned, or any portion of the said lease or the property therein described sublet, or said lease sold or transferred without the written consent of The Stein-Bloch Company first obtained." I ask you who suggested that clause in this contract?

920 A. Mr. Guggenheim suggested the entire contract.

Q. Does this particular clause have relation to the matter of discussion between you and Mr. Guggenheim concerning renting a portion of the store that you have been describing?

A. Yes sir.

Q. At the time Mr. Guggenheim was in Topeka in October, 1913, that you are referring to now, was any of the amount of the spring purchases of fall goods for that year then due?

A. The goods weren't shipped yet.

Q. Weren't shipped?



A. No sir.

Q. Then under this agreement of February, 1913, was the amount the previous fall delivery then due?

A. The year before you mean, delivered the fall of 1912?

Q. No, the fall order delivered in the spring?

A. No, they weren't due under the contract, no sir.

Q. Now you have reference to the contract of February?

A. Yes sir.

Q. Did you say anything about that situation to Mr. Guggenheim when he proposed the terms of this agreement?

A. Oh yes. This contract that you hold in your hand is a direct relation of this contract on his part.

Q. Mr. Badders did you say anything of that kind to Mr. Guggenheim?

A. Oh yes, I of course remonstrated and didn't want to accept a new contract at any time.

Q. Now at that time Mr. Badders was there anything said between him and Mr. Guggenheim about another increase of your capital stock?

A. Yes sir.

Q. Tell the jury what it was?

A. Well when Mr. Guggenheim was out here in October at the time this contract which Mr. Hite has just been speaking about was entered into, Mr. Guggenheim asked me to increase the capital stock again as I had done in the spring and to give them such a portion of the increase as would pay their bill at that time.

Q. What if anything did you say to him about that matter, or when you could do that?

A. Well I told him that if he could convince me that the business needed the increased capital, and I will say frankly that I rather thought myself that the business did need an increased capital.

Q. Just what you said to Mr. Guggenheim is what I am trying to get at Mr. Badders?

A. In reference—

Q. Yes, I asked you what if anything was said there with reference to it being necessary for you to have some time to get in the capital?

A. I told him of course I couldn't sell the capital at once no more than I could have in the spring, took me a little while to raise it.

Q. Calling attention to the clause of this agreement, Exhibit No. 1, that there was to be a payment of \$3,366.81 to be paid on or before December 20, 1913, I will ask you if that date had any reference to the matter of getting the capital stock paid in, this increase?

A. Well I figured that if necessary I could raise the amount by that time.

Q. Now afterwards Mr. Badders was the capital stock of the Bad-Clothing Company increased?

A. Yes sir.

Q. Was that done pursuant to this talk that you had had with Mr. Guggenheim?

A. Yes sir.

Q. Now when that capital stock was increased what if anything did you do about placing the notice of the increase on file?



A. Well I increased the capital stock twenty five thousand dollars and filed with the Secretary of State a notice of the increase as is required by a Kansas law.

Q. Were you furnished any blanks or papers for that purpose?

922 Q. Yes sir the Secretary of State furnishes blanks to corporations for that purpose.

Q. You followed the blanks in that case?

A. Yes sir I simply filled in the unfilled portion of the blanks.

Q. Now you subscribed for that capital stock, did you not Mr. Badders?

A. Yes sir.

Q. Was any public notice of the fact that you had subscribed for the stock placed on file in the Secretary's office?

A. Oh yes that is all included in the statement; I believe that statement appears as an exhibit.

Q. Now Mr. Badders I hand you Exhibit No. 6, being a certified copy of the matter of the increase from twenty five to thirty five thousand dollars, and will ask you if that has reference to the increase of the capital stock at the first suggestion made by Mr. Guggenheim of ten thousand dollars?

A. Yes sir, on the 7th of February.

Q. Now was that increase notice made upon a blank furnished by the secretary of state?

A. Yes sir, the same as this blank.

Q. I now call your attention to Exhibit No. 7, and will ask you if that is the paper, if that is the certified copy of the notice of increase from thirty five thousand to sixty thousand?

A. Yes sir.

Q. Was that also made upon the regular blank furnished by the Secretary of State?

A. Yes sir.

Q. Who did the work of preparing that Mr. Badders?

A. Of preparing the blank?

Q. Yes?

A. Well I believe I filled it out.

Q. You didn't have any counsel about it did you?

A. No sir, I didn't have any attorney at that time.

923 Q. At that time, Mr. Badders, state what was the condition of the Badders Clothing Company with reference to its being solvent or its financial condition being good or bad?

A. At the time of the increase?

Q. At the time this notice was filed in the office of the Secretary of State?

A. The company was perfectly solvent, the company has always been solvent.

Q. Mr. Badders had you at any time now prior to this visit of Mr. Guggenheim in October, 1913, had the Badders Clothing Company ever had any difficulty with any of the wholesale men with whom it dealt?

A. No sir.

Q. Had any of the wholesale men aside from the Stein-Bloch people ever been out to Topeka to see you about their account?

A. Not to see me about their accounts, no sir.

Q. Had you ever had any drafts drawn on you?

A. Never a draft drawn on me during my business experience up to this time.

Q. At that time Mr. Badders it is in testimony here that you gave your note payable to the Badders Clothint Company in six months for this twenty five thousand dollars; now I understand you to say that you had subscribed for all of this stock this increase?

A. Yes sir, yes sir.

Q. At that time. State if you know whether the Badders Clothing Company or you could have used that note as a basis of credit?

A. Why certainly.

Q. Did you know of that fact at that time?

A. Why yes sir.

Q. Mr. Badders was it your purpose to hold all of that twenty five thousand dollars' increase?

A. Personally?

Q. Yes sir.

A. No sir it was not my intention to hold it personally.

924 Q. What were you going to do with it?

A. I expected to sell it.

Q. Did you at that conversation with Mr. Guggenheim have any talk with him about this sale?

A. Of the stock?

Q. No that you contemplated putting on?

A. Yes sir.

Q. Was there any talk with Mr. Guggenheim about this Felix failure?

A. Repeat your question Mr. Hite; at what time did I have a conversation—

Q. In October when he was out there in Topeka?

A. It may have been suggested at that time, I do not recall whether it was or was not.

Q. Did he know, if you know, anything about the contemplated sale of the Felix Company?

A. Oh it was on when he was there.

Q. It was on, you say?

A. I think he was there during the sale, yes sir.

Q. Now Mr. Badders at that time I understand that you had cancelled your spring orders for fall and winter goods. State to the jury how much those cancellations amounted to?

A. Well my recollection is, off hand, of course, I have no access to the books of the company and cannot state from positive information, is that there was between fifteen and twenty thousand dollars cancelled.

Q. Cancelled?

A. Yes sir.

Q. Did the Badders Clothing Company at that time have in its stock of merchandise a sufficient quantity of goods proper to carry on the contemplated sale?

A. No sir, not to carry on the sale.

Q. After Mr. Guggenheim left Topeka what if anything did you do looking to replenishing of the stock?

A. You say replenishing the stock, you mean—

Q. Getting some stock in there?

925 A. Suitable for sale purposes.

Q. Yes sir, that is what I am driving at?

A. Well we figured out we would have to have from ten to fifteen thousand dollars' worth of stock, clothing, for the sale and went east and purchased it.

Q. You had a stock of clothing on hand at the time, did you not Mr. Badders?

A. Yes sir.

Q. Was that clothing suitable for the sale?

A. Well part of it was, a small portion; most of it was high priced merchandise.

Q. Most of it was high priced merchandise?

A. Yes sir.

Q. And is that character of merchandise usually put on sales of that kind?

A. Just a little of it is used to add to the effect of the sale, as a rule.

Q. Now what did you do towards getting the stuff you needed there for the sale?

A. We went east and looked through the markets and made our purchases.

Q. Who did?

A. Mr. Boyd and myself.

Q. Did you go to Rochester?

A. Yes sir.

Q. Well first where did you go?

A. I think we went to St. Louis first.

Q. Did you buy any goods of any consequence in St. Louis?

A. A little, not very much.

Q. Now what kind of goods did you look at?

A. We looked at goods for sale purposes, close outs.

Q. Now what do you mean by close outs?

A. Close outs, where a manufacturer or a jobber had sold a majority of a particular line or lot of goods, there are sometimes and nearly always, a small portion of that line or lot left which he cannot sell.

Q. Left-overs, are they?

926 A. Yes, which he cannot sell as he could the original amount of the stock he had.

Q. Now at that time of year, namely, in November, 1913, state whether or not those close outs or left overs that you speak of could be bought at a price, at a lower price than they could have been bought for in the previous spring when they would naturally be ordered?

A. Yes sir.

Q. When you were in St. Louis did you look at that class of goods?

A. Yes sir.

Q. Now from St. Louis where did you go?

A. Chicago.

Q. Who did you see in Chicago?

A. Well we called on a number of houses, I will have to refer to my memoranda; we called on Alfred Decker & Cohn, Society Brand clothes.

Q. Buy any goods from them?

A. No sir.

Q. Who else?

A. Leopold, Solomon & Isengraft.

Q. Buy any goods from them?

A. Not at that time, we didn't buy any goods in Chicago on our going trip.

Q. From Chicago where did you go?

A. To Rochester.

Q. See Mr. Guggenheim there?

A. Yes sir.

Q. Did you tell him what had been going on there in the store? Did you tell him what you had been doing with reference to the increased stock?

A. Yes sir.

Q. Had he received a notice of the increase, if you know, through the agency?

A. Well I don't know as to that; I do know his company was a subscriber to the mercantile agencies, and I also know the mercantile agencies got the report from the secretary of state's office because both representatives called on me in reference to it but whether or not Stein-Bloch got a copy of it I couldn't say.

Q. As to the time these representatives called on you; stop at this place, Mr. Dunham and Mr. Dale?

A. Mr. Dunham and Mr. Dale.

Q. Did they say anything when they called on you to the effect they had seen this notice of the increase?

A. That was the reason they called.

Q. Mr. Badders did either one of those—did you say to either one of those men that this stock had been subscribed for by any men there in Topeka?

A. Why of course not, the corporation statement in the secretary's of state's office showed who subscribed for it, and they saw that and came to me in response to that.

Q. They tell you they had seen that?

A. Yes.

Q. From Rochester where did you go?

A. To New York City.

Q. Did Mr. Guggenheim go down with you?

A. Yes sir, Mr. Guggenheim went with us.

Q. When you got to New York—

A. He was simply going to New York and it was just a happen-  
stance that we went together; he didn't buy goods with us.

Q. Who did you go to see in New York?

A. We called on I suppose thirty different houses there.

Q. What kind of goods did you ask for?

A. Cheap goods, goods suitable for sale purposes.

Q. Did you tell these merchants in New York what you there for?

A. Yes sir.

Q. State whether or not you were asking for prices on left or close outs, as you call them?

A. That is all we bought, that was all we were looking for we wanted.

Q. Now state some of the people you went to see there in New York.

928 Q. I don't care for you to tell thirty of them, but those——

A. Well we called on Tobias, Grenthal and Mendelsohn, S. Michael & Son, Robert Kamber & Co., Abraham Bauman, N. Trivers & Bros., J. Samuels, Cohen & Lang, Lipps Brothers, wish any more?

Q. That will be enough Mr. Badders. With reference to Col. Lang, there is some testimony here Mr. Badders to the effect you and Mr. Boyd had a conversation in Mr. Lang's office in which Mr. Levy testified, perhaps you will recall?

A. Yes sir.

Q. I wish you would state what the fact is with reference to the visit of you and Mr. Boyd to Cohen and Lang's as you remember it?

A. Well, as I remember it, and I have a pretty distinct recollection of it for the reason that our notice was called particularly to the brand of clothing which they carried, which was the Elk brand and they had a large Elk head on their stationery, and so on, we looked at over coats there and made a tentative purchase which we afterwards confirmed before leaving New York.

Q. Did you have a conversation with Mr. Lang in regard to purchases for cash upon delivery of goods?

A. No sir. Our terms in every instance in the case of this clothing which we bought there in New York City was net ten, that is extra.

Q. What does that mean?

A. That means the goods would be, the amount of the order would be due forty days after receipt.

Q. After the goods arrived in Topeka?

A. Yes sir.

Q. Did you in the course of any conversation there state to Mr. Lang, or in his presence, that this increased capital stock had been paid up in cash.

A. No sir.

Q. Was there anything said by you there Mr. Badders from which any such inference could be drawn?

929 A. We never said anything about the increase in capital stock.

Q. State whether in writing to these wholesale men with refer-

to this increase you did or did not refer them in substantially all cases to the Stein-Bloch Company?

A. Yes sir, where we made any reference at all we referred to the Stein-Bloch Company.

Q. Now as I understand you Mr. Badders Mr. Guggenheim knew all about this increase did he not?

A. Yes sir, he suggested it, he ought to know all about it.

Q. Now about how much goods did you buy in New York all together, without reference now to cancellations?

A. Well there was an exhibit Mr. Hite showing in detail what I purchased in New York.

Q. Just tell the jury, if you can?

A. Well, I think it was perhaps seven thousand dollars.

Q. I mean now without reference to cancellations, the total purchase?

A. Without reference to cancellations?

Q. Yes?

A. Oh we looked, as I said, we looked at merchandise I presume at thirty houses, and in a large number of instances we picked out merchandise we thought we might need and told them to hold the order; we were looking around the market and the reason we did that, the reason of that was we wanted to get the best stuff we could at the lowest price, of course, and after looking thoroughly through the market we cancelled such portion as we didn't want.

Q. Now how much were your purchases in the east after you had cancelled out and told them not to ship certain proportion of the stuff you bought?

A. In New York City I think about seven thousand dollars.

Q. Now how much were they all together Mr. Badders, the purchases that were made for this sale, taking out the cancellations?

A. In all three cities, Chicago, Rochester and New York?

Q. Yes?

A. Well I judge they were from twelve to fifteen thousand dollars.

930 Q. Did they exceed the amount that you had cancelled?

A. I think not, no sir.

Q. When I say that—

A. They might have run a little over or a little under fifteen thousand, I don't remember.

Q. When I say cancelled, I mean the cancellations you made at the time of the Felix failure?

A. I understand, no.

Q. That is what you mean is it?

A. Yes sir.

Q. Now Mr. Badders Mr. Boyd went east without you after your return from the first trip, did he not?

A. Yes sir, he went to Chicago.

Q. Do you know whether Mr. Boyd on that trip bought any sweaters?

A. No, we bought sweaters when we were together in Chicago.

Q. Are those some of the sweaters you sold to Mr. Voiland?

A. Yes sir.

Q. Now what per centage of the regular wholesale price did you pay for those sweaters?

A. We paid fifty cents on the dollar; we bought thirty six dollar stuff for eighteen and twenty four dollar quality for twelve; that price per dozen.

Q. And how was that billed to you in Topeka?

A. Why it was billed at regular prices.

Q. And those regular prices on their invoices were entered in your clerks on the stock books, were they not?

A. Yes in some instances; it was not billed at regular prices in all instances, but as I recall this particular shipment it was.

Q. What do you say about hosiery; that some of the hosiery Mr. Voiland got, as to prices?

A. As to the prices we paid for it?

Q. Yes?

A. Well this hosiery was bought in job lots, less than cost.

Q. What do you say Mr. Badders as to whether or not the whole purchase by Mr. Voiland the Badders Clothing Company lost any money?

A. We didn't lose any money on the sale to Mr. Voiland.

Q. You know whether Mr. Voiland still has some of the sweaters yet?

A. Yes sir.

Q. Got some of the hosiery yet?

A. Yes sir, he so informed me, and I saw the sweaters over there.

Q. Now Mr. Badders you spoke a little while ago about having had negotiations for a partner to come into the business with you. Please state to the jury what negotiations you had had looking for somebody to take Mr. Frankenstein's place with you or come in with you at least?

A. Well at the time Mr. Frankenstein went out his brother Harry being the representative of Stein-Bloch was of course interested in having some one there.

Q. Well, just state what you were doing now and what negotiations you had looking to getting a partner?

A. Well I was in correspondence with Mr. Frankenstein and he was looking out for a partner for me; and I was also on the lookout for a partner on my own account.

Q. Did anybody come to see you upon that matter?

A. Yes sir.

Q. Who?

A. A gentleman by the name of McCarvel from Omaha; I believe he was from Omaha; I have a telegram here I can tell by reference to it. (Referring to telegram.) Jno. R. McCarville.

Q. Did that gentleman come to Topeka to see you on this subject?

A. Yes sir.

Q. Who else did you negotiate with?

A. I had negotiations with a Mr. Jordan, proprietor of the Clothing Company at Hutchinson.

Q. Did he come to Topeka?

A. Yes sir.

Q. In reference to this matter. Did you keep Stein-Bloch advised of these matters?

932 A. Yes sir.

Q. Did you have negotiations with any other person?

A. In that connection I have a letter from the Stein-Bloch Company regarding Mr. Jordan, referring to him.

Q. Did you receive this letter from Mr. Guggenheim?

A. Yes sir, I received it in the mail. That is Mr. Guggenheim's signature.

Mr. Hite: We offer this letter, marked Exhibit No. 105, in evidence. (Reading same to the jury.)

(A copy of Exhibit No. 105 is attached hereto and made a part hereof.)

Q. Was that letter with reference to some correspondence you had had about this Mr. Jordan?

A. Yes sir.

Q. Now Mr. Badders when you came back to Topeka after this trip that you had with Mr. Boyd you put on this sale, beginning in December 1913, did you not?

A. Yes sir.

Q. Now who conducted the sale of 1911?

A. H. L. Gilmore & Company.

Q. Did you employ those same people to conduct the sale of December 1913?

A. Yes sir, employed the same firm but the sale was conducted under the name of Adler because for advertising purposes we didn't care to have the public know the same sales company was conducting the sale.

Q. The same firm conducted the Felix sale?

A. Yes.

Q. Who represented the firm of H. L. Gilmore, came to Topeka?

A. For the second sale?

Q. Yes?

A. Mr. Adler, he has been in the court room, and Mr. Stern.

Q. Who prepared the advertising for that sale?

A. Mr. Adler prepared most of it, Mr. Stern had a hand in it also.

Q. Was there any talk there between you and those gentlemen with reference to what was in that advertising?

933 A. Yes we went over all the advertising, that is they submitted the ads to me for my approval.

Q. Was there any objection on your part with reference to this matter "on the verge of bankruptcy"?

A. There was in reference to the style of the sale at the start; that is the phrase they thought was necessary to use in order to produce results; I objected to the term "on the verge of bankruptcy."

Q. What was the result of that discussion?



A. Well they finally convinced me that it was necessary in order to produce the results which we hoped and I allowed it to be used.

Q. Now what day did this sale begin, what day of the week?

A. Thursday.

Q. That would be December 5th?

A. Yes sir.

Q. Sale start off pretty well Mr. Badders?

A. Yes started off pretty well.

Q. Now what was the sale price put on the clothing, for instance, in the beginning?

A. Well in sales of this kind clothing is always marked up.

Q. What do you mean by that?

A. The regular selling price is raised and we make a reduction; there is an ad here containing the schedule of reductions; for instance, a thirty five dollar suit would be sold for twenty eight or \$27.50, and this \$35 suit appearing in the sale would ordinarily be our regular twenty five or thirty dollar suits; suits are marked up from five to ten dollars at the fore part of a sale of this kind.

Q. And then that price is cut in two, for instance?

A. Yes, later, and then there are other changes in the prices.

Q. Now at the time this sale begun were there any reservations from the sale at all?

A. No, none.

Q. After the sale had progressed for some time was there any change in the sale price?

934 A. On the second cut, as we call it, certain of the merchandise would have been sold had it been included, practically at cost, and therefore I removed that merchandise from stock.

Q. Did you have a talk with Mr. Adler or Mr. Stern with reference to taking some of this high priced stuff out of the sale?

A. Yes sir.

Q. What was said about that by Mr. Adler?

A. Well at first they didn't want me to take any of that stock out, naturally they were working for themselves.

Q. What if anything did you say to them in that matter?

A. Well as the sale progressed and along about the middle of December the sale was not going as it should have gone, and I told Mr. Stern, I knew Mr. Stern better than Mr. Adler, he having been on the previous sale, that I was very much disappointed, and I said, what are we going to do; I want to raise a certain sum of money, forty thousand dollars was what I started out to raise, and he suggested that possibly—do you want me to continue this?

Q. No, that is enough: What was the result of that; did you take some of the high prices stuff out?

A. Yes sir.

Q. What did you do with that?

A. Took it to the basement temporarily, the first floor, down stairs.

Q. That was to get them out of sight of the customers, was it?

A. Yes sir.

Q. Now it appears in testimony here that there were some four-

teen cases of goods that were taken out of the store there, as gathered from the testimony along a few days prior or about December 20th, 1913; did you have a talk with anybody before you had those goods sent out?

A. Yes sir.

Q. Who?

A. Mr. Stern.

935 Q. Well what was the general subject of your talk?

A. Well it was following my criticism of the progress of the sale and he suggested that those goods could possibly be disposed of in either Kansas City or St. Joe.

Q. Did he suggest you shipping those goods to those places?

A. Yes sir.

Q. What if anything was said at that time Mr. Badders with reference to having your competitors get on to the fact these high priced goods had been taken out of the store?

A. Of course we didn't want our competitors to know anything about that.

Q. Why?

A. It would hurt our sale.

Q. What if anything was said during your talk with Mr. Stern with reference to how those goods should be sent to St. Joe and how sold there?

A. With reference to how they should be sent?

Q. Yes?

A. Well I asked him what he would advise in regard to shipping them; we talked the matter over together and he said, well it won't do to let them go in the name of the Badders Company, with which I readily agreed, which, however, taught me something new in the clothing business.

Q. Now Mr. Badders did you direct the shipment of those goods to St. Joe and Kansas City?

A. Yes sir.

Q. What names did you give to have the marks put on these boxes or cases?

A. Well the names are, I think are in evidence; I don't recall now, simply names that came to me at the time, no particular significance.

Q. Now what if any arrangement did you have with Mr. Stern as to looking after the storage and sale and care of those goods after reaching Kansas City or St. Joe?

A. Mr. Stern took charge of the goods.

Q. Did you get the bills of lading for these shipments?

936 A. Yes sir.

Q. Some of those goods finally got back from St. Joe to Kansas City, did they not?

A. Yes sir.

Q. Do you know who attended to that?

A. Mr. Stern, that is, he told me they would, and they were sent over, he either attending to it or had it done.

Q. Now Mr. Badders after bankruptcy proceedings were begun you ordered those goods sent back, did you not?

A. Yes sir.

Q. It is in evidence here that you talked over the telephone to Mr. Graham to get him to do that?

A. Yes sir.

Q. Is that the fact?

A. Yes sir.

Q. Now those goods all came back to the Badders Clothing Company store, did they not?

A. Yes sir.

Q. State about their delivery at the store as to whether it was done in an open and above board manner or secret when they came back?

A. They were delivered in the forenoon, and at noon, as goods are always delivered, delivered the same way.

Q. Were they unpacked then?

A. Yes sir.

Q. And what was done with them after they were unpacked?

A. They were put in stock, some of them and some of them left in the basement, down stairs.

Q. What if anything did you do with the empty cases containing these marks?

A. I asked the Transfer Company to come and get the cases.

Q. Did you have a talk over the telephone with Mr. White with reference to what he should do about those cases?

A. Yes sir.

Q. Tell the jury just what you said to Mr. White about those cases?

A. I expressly directed Mr. White to hold those cases until  
937 further orders. At that time a petition in bankruptcy had been filed.

Q. Now Mr. Badders had the Transfer Company ever before taken any empty cases away from the store?

A. No sir, the cases were always destroyed up to that time but I wanted those cases held, and they were held.

Q. Sir?

A. And they were held.

Q. Now was there a single penny's worth of those goods that had been reserved from stock, under the circumstances that you relate, that were kept out of the stock when the receiver took charge?

A. No sir they were all returned.

Q. Mr. Badders tell the jury what it was that induced you to have those goods sent back?

A. Well, a petition in bankruptcy had been filed against the company at that time, and the next day a restraining order restraining me from doing anything with the business, as I understood, so I naturally ordered the goods returned to the store so that they would be there when the receiver took charge, I having understood they were asking for a receiver at that time, but the receiver had not been appointed at that time.

Q. Now Mr. Badders state when the first trouble began about the creditors, who came up to the store first, as you remember it, in December?

A. Well McClintock and Quant's office were my first interviewers regarding—

Q. What business are McClintock & Quant engaged in in Topeka?

A. They are bankruptcy attorneys, that is their business.

Q. Are you acquainted with the fact they have a large bankruptcy business?

A. Yes sir.

Q. Did you know of that fact at this time?

A. Yes sir, that is common knowledge there, what their business

Q. Now about when was it that there was any pressing for claims?

A. Well it was along about the middle of December I believe, possibly a little earlier than that.

Q. Do you recall the circumstance of a Mr. Cockley coming to Topeka in December.

A. Yes sir, Mr. Cockle was the credit man for Rosenwald & Weil of Chicago.

Q. Was Mr. Cockle the first one of the high representatives, or credit men of the eastern people that came to Topeka?

A. Yes he was the first eastern representative.

Q. Now when Mr. Cockle came to the store state what he said to you, what kind of demands he made upon you?

A. He made a peremptory demand upon me for the payment of their account.

Q. All of it?

A. Yes sir.

Q. Was it all due then?

A. No sir.

Q. Did you tell him so?

A. Yes sir.

Q. When was he there Mr. Badders?

A. A few days before Christmas, I believe about the 19th or 20th, along in about that time.

Q. Now when you told him the claim wasn't due what did he say?

A. Well he said he wanted payment of it.

Q. Did you give him any money?

A. Yes sir, I paid him a portion of the claim which was due.

Q. What did he do?

A. He took the balance of the claim to McClintock & Quant.

Q. Then what happened?

A. Suit was filed.

Q. Well, what happened in connection with that suit?

A. They garnisheed my bank account or attached my bank account.

Q. Now Mr. Badders did that become public there in the city?

A. Why certainly.

Q. There was in testimony here a telegram that you sent to Mr.

939 Guggenheim or Stein-Bloch's relative to veiled threats made by McClintock & Quant of bankruptcy proceedings; tell the jury what that was?

A. Well, Mr. Quant and Mr. McClintock both called on me quite often and told me that these accounts had better be paid, and they were very insistent on my paying just one of the accounts, or paying something on one of the accounts.

Q. Now Mr. Badders, at that time did you know that if you turned out to be insolvent, and paid one of these accounts, that that would constitute an act of bankruptcy?

A. Yes sir.

Q. State Mr. Badders at that time what was the condition of your family affairs? As to your wife being sick or well or otherwise?

A. Well my wife was sick at the time.

Q. Was she confined?

A. Yes sir.

Q. Soon after that. When was she confined?

A. The first of January.

Q. And had she been quite sick for a length of days before that?

A. Yes sir.

Q. Are you and your wife devotedly attached to each other Mr. Badders?

A. We are.

Q. Your wife subsequently was delivered of the baby?

A. Yes sir.

Q. And was she very sick during that time?

A. She was.

Q. Now during this time of this sickness in your family state whether other creditors and attorneys for the creditors were in your store every day?

A. Yes sir.

Q. What were they doing Mr. Badders with reference to any time you went out, would they stay there waiting for you.

A. Yes sir, they hung around the store.

940 Q. Now Mr. Guggenheim came to Topeka at or about the holiday season did he not?

A. I think he got there the day after Christmas as I remember; he may have been there before Christmas but my recollection is he got there the day after.

Q. Do you know of any threats Mr. Guggenheim made with reference to what Stein-Bloch would do?

A. Yes sir.

Q. What threats were those?

A. Well in one instance he told me, "If my claim isn't paid in five minutes" he would close the store.

Q. Give the jury the names of any other collection lawyers, if you know, who were there pressing you for claims about that time?

A. Mr. Barnum of Smith & Barnum, Rossington, Smith & Barnum, I guess it is, were there, they represented R. G. Dunn & Co. I believe. John W. Newell who handles collections; that is not his

exclusive business; Bennett R. Wheeler, John L. Hunt; that is all I recall just now.

Q. Mr. Badders at that time were you endeavoring to have your books brought up to date and all the entries made upon them?

A. Yes sir.

Q. Had you given instructions to your employes to do that work?

A. Yes sir, I told them to get it out just as soon as possible; these creditors were pressing me for a statement and I wanted the information regarding my business.

Q. Did you tell these people who came there to make their demands your clerks were engaged in this work?

A. Yes, and they could see it.

Q. Did you make any statements to them to the effect if they would wait a little on you you would give them these statements?

A. Yes sir.

Q. What was the result of your talks of that nature with these gentlemen?

A. Well, they didn't wait, they kept pressing me.

941 Q. Were any other suits brought against the Badders Company?

A. Yes.

Q. Who sued?

A. Smith, McCord, Townsend of Kansas City sued, the Empire Cap Company of Kansas City, Leopold, Solomon and Isengraft of Chicago, that is all I remember just now.

Q. Now Mr. Badders what if anything did you do when this attachment of your bank account was threatened, as to drawing your money out or otherwise?

A. When he threatened suit and attachment I drew the money out the day before, all but ninety dollars.

Q. Is that the six thousand dollar check here dated December 22d?

A. Yes sir.

Q. Now Mr. Badders there is some testimony here about your company having made a deposit in the German Bank of ten dollars and drawing a check for some three thousand dollars?

A. To Stein-Bloch?

Q. To Stein-Bloch. Please tell the jury what you intended to do in that transaction and why you didn't keep money down at the German Bank on deposit to meet that check?

A. My bank account had been with the Bank of Topeka up until the time of this attachment of which we have just been speaking. At that time, of course, naturally, it was not safe for me to put any amount of money in the bank because if I had done so these attorneys would immediately have attached it.

Q. Just there a moment, Mr. Badders, at that time did you know that if the attachment was not released within a few days under the provisions of the Bankruptcy Act that would be an act of bankruptcy?

A. I understood so, yes sir; I knew it was not safe to allow an

attachment if I could avoid it, and I endeavored to do so; so I deposited a nominal sum in the German American Bank, ten dollars, so that I would have an account there in order to draw checks against it, and I sent this check to the Stein-Bloch Company for \$3,366.88, as I recall the amount, and I expected to take the check up when it was presented for payment.

942 Q. Now when you were finally notified about this check did you go to the German Bank?

A. Yes sir.

Q. Did you at that time and place make an offer to take up this check?

A. Yes sir.

Q. What did you say in that respect?

A. I had the money with me to take up the check and my talk was with Mr. Benson. Mr. Mueller I think came in during the talk and I told them that if the Stein-Bloch check came through in the usual course of business I would pay it, otherwise not.

Q. What did you mean by usual course of business?

A. I meant if that check was deposited in the Stein-Bloch's bank at Rochester and sent through the clearing house there and came through the clearing house in Kansas City or Topeka in the regular course of business that check would be paid.

Q. Well what made you stick for that kind of a routine Mr. Badders.

A. Because that is the usual course that commercial checks follow, and if a check is sent direct, as this Stein-Bloch check was sent, it hurts a retail business man's credit, and particularly if the manufacturer who receives the check attaches thereto, as was done in this case, so I am informed, a request to wire if check is not paid, it hurts a man's credit worse.

Q. Now Mr. Badders tell the jury about how much money there was that came from this sale? Before I get to that I wish you would tell the jury what the confusion, if there was any, in the store of the Badders Clothing Company, was at that time?

A. Well there was naturally confusion attendant upon a sale of this kind.

Q. Was that confusion increased or otherwise by the pressure of these law suits?

A. Why certainly, these fellows were taking my time, talking to them, and everything else, and I couldn't attend to business properly, couldn't get my books up, you naturally get behind on your books, no attempt is ever made at Bookkeeping during a sale, you cannot do it.

Q. Were you at that time attending also at home to try and see about your wife?

A. Yes sir, I was.

Q. Now Mr. Badders state about how much money you got, drew out of the bank, got in in cash, and all, that came into your hands now on account of this sale?

A. Well, the proceeds of the sale——

Q. I mean now after paying the running expenses of this numerous body of clerks that was there?

A. The proceeds of the sale, as I recall, were about, I think it is in evidence, thirty six thousand dollars.

Q. Just there Mr. Badders have you any means of verifying these matters?

A. Absolutely none; it is in testimony that these records were taken out of my possession and since have been refused access to them.

Q. Let's go now Mr. Badders, now with reference to these records, I wish you would state to the jury whether or not you went up to this clothing store and requested leave to go through your books and papers?

A. Yes sir, I did.

Q. On whom did you make that request?

A. On Mr. Dick Thomas who was in charge.

Q. Was there anybody else there at the time that was made?

A. Yes sir.

Q. Who?

A. Mr. Burdick and Mr. Fig were present in the store.

Q. Do you know whether either of them heard your request?

A. Yes sir, they both heard it and since told me they did.

Q. What did Mr. Thomas tell you?

A. He told me that on Mr. Clark's orders I was not to have access to the books or the store; my presence was not wanted.

944 Q. Now Mr. Badders, the residue of the merchandise there in the store was afterwards sold by the receiver, was it not?

A. Yes sir, so I am informed.

Q. After that did you go up there and try to get any books and papers or have them preserved?

A. Yes sir.

Q. Tell the jury what you did about that?

A. After the sale was over that is after the receiver had sold my stock of merchandise, I went up there the next day in response to Major Harvey's request that I go.

Q. Who is Major Harvey?

A. Major Harvey is attorney for Mr. Clark, the receiver.

Q. Go ahead.

A. And picked out such records and papers and correspondence as I wanted preserved; I told him to save all the letter files and then we kept in the vault all of the accounts of the store, by accounts I mean charges to our customers, people who had bought goods from us—

Q. Abbreviate this as much as possible, Mr. Badders? You made a request for the books and papers up there to be preserved?

A. Yes sir, and I pointed out the papers I wished saved.

Q. Now what was done in your presence about taking those papers away from there?

A. They were carried out of the store by the transfer men.

Q. Now at that time Mr. Badders the entire stock of the Badders



Clothing Company and stock of goods had been taken out, or in process of being taken out.

A. There wasn't anything there but the fixtures at that time.

Q. And Mr. Clark wanted to move away from there?

A. Yes sir.

Q. These papers were loaded on a wagon you say?

A. I believe so, I didn't see them loaded on a wagon; I knew he called a wagon, a man came in.

Q. Were they boxed up there at the store?

A. No sir they were just carried out.

Q. Mr. Badders have you ever had access to those papers since?

A. Never.

945 Q. Now tell the jury about how much money actually came into your possession after you paid these current expenses, one way and another, so far as you now remember.

A. I presume about thirty two thousand dollars, or thirty three thousand dollars, in that neighborhood at that time, proceeds of the sale.

Q. Tell the jury what you did with it?

A. May I refer to memoranda?

Q. Tell them from your memory, never mind about the memoranda unless it refreshes your recollection?

A. I paid to Rosenwald & Weil, this was the gentleman who came out and demanded payment, \$229.73; I paid to the Stein-Bloch Company \$1,866.88; I paid to the Bank of Topeka on account of borrowed money four thousand dollars; I paid to the Merchants National Bank twelve hundred dollars. I may be mistaken as to the exact amount, but think it was twelve hundred dollars to the Merchants. I paid commissions on sales, during the sale, to Mr. Burdick and Mrs. Burdick and Mr. Boyd a total of \$515.

Q. Now stop at that point a minute Mr. Badders and state how you happened to pay these employees that much?

A. Well these two boys in particular were my main stay in the business.

Q. Was that, or was that not a sort of a bonus?

A. Yes sir, it was compensation for valuable services I considered they rendered.

Mr. Robertson: How much was that Mr. Badders?

A. Five hundred and fifteen dollars. I paid to W. A. Byers my father-in-law eleven thousand five hundred dollars.

Q. Now what was that for Mr. Badders?

A. Five thousand dollars of that was for borrowed money represented by a note which he returned to me cancelled; fifteen hundred dollars of it he paid to the Bank of Topeka on my note at the bank.

Q. Was he endorser on that?

A. Yes sir.

946 A. And five thousand dollars of it was divided into two items, three thousand dollars for my home, which he had built and which I at the time had agreed to pay for, and two thou-

sand dollars for college avenue lots upon which we had expected to build.

Q. Now Mr. Badders tell the jury as to Mr. Byers' financial responsibility?

A. Mr. Byers is a man worth from sixty to seventy five thousand dollars.

Q. Did he or did he not own a valuable quarter section of land in Nemaha County?

A. Yes sir, better than a quarter.

Q. Better than a quarter?

A. Little over half section, as I understand it.

Q. Owned another quarter section in Doniphan County, did he not?

A. I think so, I think it was about a half section all together.

Q. State if you know whether Mr. Byers owes anybody anything on earth, so far as you know?

A. No he doesn't.

Q. Mr. Badders is Mr. Byers amply able to respond in case he should be called upon for that eleven thousand five hundred dollars?

A. Why certainly.

Q. Now what else did you do about it?

A. I paid Arthur Capper on account of advertising in Capital six hundred dollars.

Q. Is that the item Mr. Griest testified to?

A. Yesterday, yes sir, five hundred dollars to Frank P. MacLennan in full of his advertising account. Six hundred dollars to Davis Mercantile Company.

Q. Was that on account of Badders Clothing Company?

A. Yes sir. I have a lot of items here, Mail Printing Co., Central Topeka Printing Company——

Mr. Robertson: Let's have each one separate.

Q. Have you got those items separately?

947 A. No sir, I have no way of telling what the exact amounts were.

Q. What is the aggregate of these items?

A. Want me to read the list of them?

A. Yes, just read the list?

A. For freight and Topeka Transfer Company, and printing and stationery used during the sale, the aggregate of those items is about six hundred dollars, as I recall at this time.

Q. Those miscellaneous items?

A. Yes.

Q. What else did you pay?

A. I paid my personal taxes two hundred dollars.

Q. Go ahead?

A. I made a deposit of three thousand dollars with my attorney.

Q. Now Mr. Badders were all of those items that you have spoken of expenditures made by you prior to the bankruptcy matter?

A. Yes sir.

Q. Now when this petition in bankruptcy was filed did you have on hand any balance of money?

A. When the petition in bankruptcy was filed?

Q. Yes?

A. Yes, I had money on hand.

Q. In what form was that; I am coming now Mr. Badders to this bond transaction with the Prudential Trust Company; tell the jury about that, the seven thousand dollar matter?

A. Those were bonds I purchased, seven thousand dollars of bonds and afterwards sold them back to the Prudential Company.

Q. Now as I understand Miss Mahoney testified that was on the 26th of January?

A. About that time, I don't remember the dates.

Q. You got the money back; why did you exchange the bonds in money?

A. I considered the money was better security, that was my reason for doing it; it was assets of the Badders Company; my idea in buying the bonds in the first place was so I would get interest on  
948 the money.

Q. Now what did you do with that money after you got it from the sale of those bonds?

A. I disbursed it.

Q. I mean temporarily; what place did you put it?

A. I kept it in the Bank of Tepeku.

Q. On open deposit?

A. Not on checking deposit.

Q. Was it in a safety deposit box, something of that kind?

A. Yes sir.

Q. Now Mr. Badders what became of that seven thousand dollars?

A. Well five thousand dollars of it was used as a guaranty, so to speak, in the appeal bond.

Q. What appeal bond?

A. That I had to give in the appeal of the bankruptcy case.

Q. Of what company?

A. The Badders Clothing Company.

Q. Was that bond put up to secure the creditors of the Badders Clothing Company?

A. Yes sir.

Q. Well what did you do with the rest of the money?

A. There was about two thousand dollars I paid, little over two thousand, twenty five hundred perhaps I paid Mr. Graham twenty five hundred dollars.

Q. Well was that money paid out of this sales money, or was it before the sale, or do you remember?

A. I think it was paid out of the sales money, I don't recall, I can't tell you the dates on these transactions, give you the items and what they were for.

Q. Now Mr. Badders there is one or two matters I will take up very briefly and wish you would help us hurry along. Coming to this Voiland incident that has been spoken of here in testimony, as I understand it, the testimony tends to show that Mr. Voiland and

you had negotiations looking to your selling him some goods and that on Christmas evening Mr. Voiland came to the Badders Clothing Company's store and there selected some goods and they  
949 were taken away that night and that Mr. Voiland paid you in currency for the amount of them, and that he bought those goods for fifty five cents on the dollar, and that you called up the Transfer wagon or transfer man some time about eleven o'clock Christmas night and the delivery was made at Mr. Voiland's store at some time after mid-night; now tell the jury all about that, who was present, and what was said?

A. My negotiations with Mr. Voiland had been extending over a period of about two weeks. Mr. Voiland came to the store; if I tell the detail Mr. Hite—

Q. Perhaps it would be better for me to ask you a direct question?

A. I think the jury are entitled to know the detail of the matter, I want them to understand this whole deal.

Q. What is the fact with reference to how those goods happened to be delivered to Mr. Voiland that night?

A. Well, Mr. Voiland asked me when I could deliver the goods and I told him I didn't know, I could see; and he asked me to deliver them as soon as possible and I told him I would see if I could deliver them that night and I called Mr. White and he said he could send a wagon and they were delivered that night.

Q. Mr. Badders what is the fact in reference to getting money from Mr. Voiland in cash, rather than taking it in check?

A. Mr. Voiland had the cash with him; he remarked at the time, "I see your sale is for cash, and do you want the cash?" and I said, "If you have got it I would like to have it," and he gave me cash.

Q. Mr. Badders was there anything in that transaction of any sort of concealment or secrecy or anything of that kind?

A. Absolutely not, Mr. Voiland was supposed to come at ten o'clock Christmas morning to make the deal originally.

Q. Was Mr. Boyd there?

A. Yes sir.

Q. Mr. Voiland's man there or not?

A. You mean when the transaction was finally made?

Q. Yes?

950 A. Yes.

Q. Now what about this Mills transaction?

A. These ladies' Phoenix Hosiery you refer to?

Q. Yes sir.

A. We decided to close out our stock of ladies' Phoenix hosiery and Mills carried ladies' Phoenix Hosiery, they are the biggest dry goods store in Topeka, and I went up and saw them and they said they could use the merchandise and they came down and took it; I sold that merchandise to the Mills Company at eighty five cents on the dollar; my discount on Phoenix Hosiery was the same as Mr. Mills testified to, six per cent and in addition to that we had a special trade discount making eleven per cent discount, so these goods were only sold to the Mills Company at a loss of four cents on the dollar.

Q. Mr. Badders give the jury your best judgment now in view of

all of your knowledge, and what has been said here about these books, as to how much the Badders Clothing Company actually owed, how much money it would have taken to satisfy its creditors?

A. About sixty thousand dollars.

Q. Now it is in testimony here that there was seventy thousand dollars on the face of the ledger, due to certain creditors, what do you say as to that?

A. Well those accounts were all, with the exception of a very few of these net purchases made, these accounts were all subject to heavy discounts.

Q. What do you say as to the correctness of the items that appear in Mr. Coulson's statement?

A. Well there are a number of incorrect items, I pointed out several at the time.

Q. Now Mr. Badders state what if any experience you have had with reference to the percentage of actual value that is realized from a bankruptcy sale?

A. Well bankrupt stocks are sold at from twenty five to fifty cents on the dollar.

Q. Of their worth, is that what you mean?

951 A. Yes sir.

Q. Now Mr. Badders about how much accounts receivable, due to the company, was there when you left this?

A. About eighteen or nineteen thousand dollars on the books.

Q. Were some of these old?

A. Very few of them.

Q. What do you say Mr. Badders from your experience in the collection of the accounts due to the Clothing Company as to what they were worth?

A. We figured on a depreciation of ten per cent.

Q. Now Mr. Badders tell the jury whether or not from your knowledge of this business, if you had been let alone, whether you could have paid those debts?

A. There is not any question about it.

Q. State to the jury whether or not any considerable portion of the debts were due at the time of this attack by attachment was made on the Badders Clothing Company?

A. No sir, the bulk of the indebtedness was not due.

Q. When would it have become due?

A. Well, these accounts matured at various times at sixty, ninety, some cases one hundred and twenty days, on the invoices.

Q. Tell the jury very briefly about this August sale?

A. The sale of the Children's department?

Q. Yes?

A. We decided to close out our Children's Department; well it was talked of while Mr. Frankenstein was with me, it is a well known fact a Children's Department is not a payment department in a clothing store and it is carried merely for customers.

Q. Come right down.

A. This Children's Department we decided to close it out. We

bought no goods for fall for Children's Department in anticipation of closing it out.

Q. Did you lose any money on that Mr. Badders?

A. We lost money on the invoice prices, yes, but it was an old stock and we didn't consider we lost any money on the actual value.

952 Q. Mr. Badders one matter I omitted; how did you expect to sell this capital stock, the twenty five thousand dollar increase?

A. To whom did I expect to sell it; I expected to sell it to my friends.

Q. And that was your expectation; was that expectation made known to Mr. Guggenheim?

A. Well he suggested it.

Q. Did Mr. Guggenheim then know Mr. Badders that you had sold a lot of stock, one share each to a number of prominent people there?

A. Yes sir, he knew that.

Mr. Hite: That is all.

The Court: The Cross examination of this witness will commence at two o'clock. You may take the jury to their dinner.

(12:15 P. M.)

(2:00 O'CLOCK P. M.)

Cross-examination.

Questions by Mr. Robertson:

Q. Believe you said that these daily reports to the Stein-Bloch people ended in the month of October?

A. That is my recollection, yes sir.

Q. I hand you a paper marked Exhibit No. 106, isn't that one of them?

A. Yes sir.

Q. What do you find the date of that to be?

A. November 29th.

Mr. Robertson: Offer Exhibit No. 106 in evidence.

(A copy of Exhibit No. 106 is attached hereto and made a part hereof.)

Q. Did you ever make any reports after that date to the Stein-Bloch's?

A. Well I don't recall, if I did why they have them; I might say in this connection that——

Q. Here they all are. (Handing papers to the witness.)

953 A. These reports and all other papers——

Q. You need not mind about your speeches.

A. Your Honor, am I not entitled to explain?

The Court: Answer the question and if any explanation to follow, it will follow.

Q. How much merchandise did you say you received during November and December?

A. My recollection is between fifteen and twenty thousand dollars.

Q. Believe you stated in your direct examination between twelve and fifteen thousand dollars.

A. I said about fifteen thousand dollars, might have varied a little either way, it was in that neighborhood, I have no way of telling at this time.

Q. The merchandise account in your ledger says that in the month of November there was \$16,431.79 of merchandise received in that month, and \$22,959.66 in December, making a total of upwards of forty thousand dollars; how do you explain that?

A. I have no explanation to offer of any figures in that ledger; I never kept the ledger; I never have had access to the ledger since I left the store; don't know whether those figures you are reading were in the ledger at the time I left the store.

Q. You don't want to offer an explanation then for any figures in this ledger?

A. If I have an opportunity to examine the ledger and compare it with the original invoices received, I can perhaps answer any questions you have to ask, so far that privilege has been denied me.

Q. Who denied it?

A. Mr. Clark.

Q. When?

A. Why I have forgotten just the exact date, it was when I went to the store.

Q. Where?

A. At the store.

Q. Now when?

954 A. Well it must have been about the time of the filing of the petition in bankruptcy.

Q. That would be about the 21st of January, 1914?

A. Must have been about that time.

Q. Who were present?

A. Mr. Burdick and Mr. Fig.

Q. Mr. Dick Thomas?

A. Yes sir, he was the one that I asked permission of.

Q. Dick Thomas is the one that refused you, you say, access to the books?

A. Yes sir.

Q. You asked him for this ledger, did you?

A. I asked him for all the books the time of that refusal in December; I believe it was when I went to prepare my schedules, and that would be after that; well you have the dates, I don't recollect those dates.

Q. What schedules do you mean?

A. Schedule in bankruptcy.

Q. Well about when was that?

A. Well, it must have been, well I can't recall, I think those dates Mr. Robertson are in evidence.

Q. Do you have confidence in Mr. Coulson?

A. Do I have confidence in Mr. Coulson?

Q. Yes?

A. Yes sir.

Q. Believe he is an honest man?

A. Yes sir.

Q. Do you think Mrs. Burdick is an honest woman?

A. Yes I think she is honest.

Q. Did you have many dishonest people there in your employ?

A. Not that I knew of.

Q. They were all trustworthy, weren't they?

A. Yes sir.

Q. Just tell this jury what happened there that you claim was a refusal to you of the right to see these books or any other article?

955 A. I went into the office, Mr. Thomas was in the office at the time, and asked him to let me look over the books, and particularly the inventory; I wanted to compare, make a comparison of the inventory as taken by the boys and as shown by the stock books, to compare the prices they had made and see if it was correct.

Q. And Mr. Clark was present?

A. Mr. Clark was not present and has so testified.

Q. But I understood you to testify a moment ago that he was present?

A. No sir, Mr. Clark was not present.

Q. Did you borrow some money in the month of November, 1913?

A. I think so, yes sir, we were borrowing from the bank all the time.

Q. How much? How much money did you borrow in the month of November 1913?

A. I have no recollection of the exact amount.

Q. Well what is your recollection about the amount of money you borrowed in November 1913?

A. Well in November, O perhaps several thousand dollars.

Q. How many?

A. I can't say exactly.

Q. Didn't you in November take certain drafts and cashiers' checks out of the Bank of Topeka?

A. Yes sir.

Q. For what amount?

A. I cannot recall the amounts, those checks and drafts are in evidence and are correct, to the best of my knowledge.

Q. I think you are mistaken about them being in evidence?

A. I understood that they were, if not I beg your pardon.

Q. Cannot you give this jury an estimate of the amount of money you borrowed in November 1913?

A. No sir, I cannot Mr. Robertson I have not had access to the books——

Q. Cannot you——

A. And I cannot recall those transactions.

956 Q. The Bank of Topeka is not your friend?

A. Yes they are my friends.



Q. And you couldn't find out there how much money you borrowed from them in the month of November, 1913?

A. Yes sir I can find out, if you want me to find out I will do so.

Q. Why didn't you find out before you came here?

A. I couldn't anticipate your question.

Q. What is that?

A. I couldn't anticipate your question.

Q. You know what your book shows here, the ledger of your house?

A. No sir.

Q. What were you- sales in November 1913?

A. Well it would be a guess, I wouldn't remember.

Q. Are the books correct on that?

A. I don't know as to that.

Q. You say they are not?

A. I don't say that they are not.

Q. You say the books are not right on those merchandise items I gave you a while ago?

A. I don't say so, I can't tell without an examination of my original invoices, comparing them with the ledger. So far as I was concerned Mr. Robertson my connection with the office work was from the original invoices; all remittances were made from the original invoices and I had nothing to do with the ledger.

Q. You did the borrowing of the money, didn't you?

A. Yes.

Q. Well are the amounts in this book correct as to borrowed money?

A. I didn't enter them, I don't know as to that, the bank record will show.

Q. How did the bookkeeper find out how much money you borrowed?

A. He would find out as the amounts were reported to him by Mrs. Burdick.

Q. Who reported to Mrs. Burdick?

A. Mrs. Burdick had the checks.

957 Q. But when you borrowed money you gave a note I take it?

A. When I say checks I don't mean checks, I mean she would have the deposit in the books.

Q. But how would she find it?

A. When we would borrow money from the bank the bank would enter on the bank book the amount of the borrowed money and Mrs. Burdick would cash that amount in making her daily deposits and would report it on her books. If you have the bank book that ought to show the amount if it can be differentiated from the deposits.

Q. The information went to Mrs. Burdick as to the amount you had borrowed?

A. Yes sir.

Q. And then from her to whoever made the entries on the books?

A. Yes sir.

Q. Do you know of any circumstances which you can tell this jury which shows those entries are not right?

A. No sir.

Q. You recall what your sales were now in November, 1913?

A. No I don't recall what the sales were in November.

Q. Do you know what your collections were from accounts in November 1913?

A. No sir.

Q. This book shows your sales \$4,184.07 in November?

A. In November, I would think they ought to be more than that.

Q. That your collections show to be \$2,942.85, making a total of 126.92. Now do you know what your total sales were for December?

A. I only know from the record which the sales managers have omitted and which I have no reason to doubt.

Q. The sales managers didn't have charge of the sales during the month of December 1913?

A. Yes the store was closed from about the first of the month until they took charge; they left Christmas day.

Q. Yes, they left Christmas day and there was six more days then December?

A. Yes sir.

Q. Sales still being advertised and going on.

A. Yes sir, there were some sales during that time.

Q. Yes sir. What were the total sales for the month of December?

A. Well there was perhaps after Mr. Adler after Mr. Stern and Mr. Adler left, well I cannot say what the sales amounted to after they left, there were sales.

Q. Have you any reason in your mind why the entries on this book, in that ledger, are not correct?

A. Oh I can't tell without looking.

Q. Can you give the jury any reason why the entries in the ledger introduced in evidence are not correct upon that point?

A. Mr. Robertson I can't answer abstract questions this way without looking at these records; I have never seen any of these records since the store since I left.

Q. You can look at this record there?

A. This happened, you know when.

Q. Have you ever asked me to see this ledger that has been introduced in evidence?

A. No sir.

Q. Has anybody for you ever made any such request that you know of?

A. Not at my request, never.

Q. How does it come that you can testify to the jury that your business is perfectly solvent and all in good running order at the different times you have testified about it and not be familiar with our books; how can you do that?

A. Why I made up monthly statements of the business, we furnished Stein-Bloch's with monthly statements of the business.

Q. Furnished Stein-Bloch's with daily statements?

A. Furnished them with daily statements but they didn't show the actual condition of the business each day; they showed the disbursements and receipts and so on, and had to make a comparison of those with the monthly statement in order to arrive at the exact statement.

Q. What are those reports made from?

A. What are those reports made from?

959

Q. Yes?

A. From the books of the company.

Q. Do you claim there is any difference between those reports and the entries on your books?

A. Well if you have any of those statements signed by me and there were such statements left in the store, why they are correct.

Q. Do you know of any differences between those reports and the entries on your books; answer the question, just notice the question I am asking you; do you know of any differences between those reports and the entries on your books?

A. Not of the statements I have prepared, no sir, I do not.

Q. What were your expenses of operation of business there for November if you know?

A. Well the average monthly expense was about twenty two hundred, that is the average, some months it was more and some months a little less.

Q. Do you know what the collections were from your accounts that people owed the store during the month of December?

A. The collections were nominal during the month of December for the reason that during *dales* people do not pay their bills, they buy for cash and let their bills stand.

Q. Didn't you assign some eleven thousand dollars' worth of your store accounts to the Bank of Topeka?

A. Yes sir.

Q. When did you do that?

A. That was done at the time notes were given them, at the time money was borrowed.

Q. When was that?

A. Well the notes show, it was during October and November and December I believe.

Q. How much did you get, how much did you borrow during that period?

A. I can't say without the books.

Q. Was it ten thousand dollars?

A. I can't say without reference to my books.

960

Q. Was it more than one thousand dollars?

A. It was more than one thousand dollars.

Q. Was it five thousand dollars?

A. I would say that it was more than five thousand dollars.

Q. Was it over ten thousand dollars, it wasn't it?

A. I wouldn't say, I think it was less than ten thousand dollars.

Q. If it was ten thousand dollars what did you do with the money?

A. I am not saying it was ten thousand dollars.

Q. That was a short time before you went to New York to buy goods?

A. Yes sir.

Q. Borrow any after you came back from New York?

A. I think there was a loan made after I returned, I cannot say to that.

Q. Who did you do the borrowing from?

A. Mr. Mulvane.

Q. Anybody else?

A. Why I think at one time during Mr. Mulvane's absence Mr. bbb handled the transaction.

Q. At any rate your borrowing was from the Bank of Topeka?

A. Yes sir.

Q. Your books here show collections during month of December \$2,203.09; who collected that?

A. That came through the office I presume, if that is the amount, course I am not admitting the correctness of those figures, I have means of verifying them.

Q. Yes. Well do you dispute these figures?

A. No sir.

Q. These books show your December sales Mr. Badders to be \$6,825.66. Do you dispute the correctness of those figures.

A. No sir I just said a few minutes ago I thought those figures are correct.

Q. What is the amount of your book accounts still held by the bank of Topeka?

A. I don't know how much they have collected on those accounts.

1 Q. What was the total amount you returned to them?

A. I believe eleven thousand dollars.

A. Haven't you any judgment as to the amount they have collected on those?

A. Told me at one time they had collected five hundred, and at another time I think six hundred; I don't know whether they ever reported any other collections.

Q. What was the character of those accounts as to being collectible?

A. They are good accounts, they were good.

Q. How lately have you looked that up?

A. Those book accounts?

Q. Yes?

A. I never have seen the book accounts since I turned them over the bank.

Q. You don't know whether the bank has collected all of that even thousand or not?

A. No sir.

Q. If they have collected that why would you have any money here at the bank coming to you?

A. Yes sir.

Q. How much?

A. Two thousand dollars.

Q. How do you figure that?

A. I understand there was nine thousand dollars borrowed, and if that is true, and collected eleven thousand——

Q. When did you learn that?

A. Well it appears in the testimony.

Q. I thought you said a moment ago you didn't know?

A. I am saying now I don't know, but understand if that is a fact——

Q. Now if you borrowed nine thousand what did you do with it?

A. Some of this money Mr. Robertson which you are speaking of, nine thousand borrowed, I don't know, I believe one note any way was a renewal note;

Q. How much was that?

962 Q. *How much was that?*

A. I don't remember whether it was one or two thousand.

Q. You didn't hear Mr. Cobb's testimony at the bankruptcy trial on this matter?

A. No sir.

Q. Have you talked to Mr. Cobb about this lately?

A. Never talked to him about it at all.

Q. Have you been in the bank lately at all to look these matters up?

A. No sir.

Q. Why didn't you do that?

A. I have no reason to go in there to look them up that I know of.

Q. Now then, just assuming, as you do, that there was probably one thousand of it a renewal, what did you do with the other eight thousand?

A. The eight thousand?

Q. Yes?

A. It was paid on store accounts and so on.

Q. Paid on store accounts?

A. Yes.

Q. What accounts?

A. Well when we were in New York we paid, we paid Jacob Cohn & Sons, not sure of that name, but they are manufacturers of what is known as Character clothes, paid them one thousand dollars; paid Robert Kamber and Hoffman twelve hundred dollars, paid Lipps Bros. five hundred, that is all the items I recall just now.

Q. Well that is only twenty seven hundred dollars, what did you do with the rest of it?

A. Well there was about twenty five hundred dollars paid to the stockholders of the Badders Clothing Company, taking up this stock held by the business men in Topeka.

Q. When did you do that?

A. That was in the fore part of December.

Q. You took that out of the proceeds of the sales of the Badders Clothing Company, did you? Sir?

A. I wouldn't say as to what it was taken out of.

963 Q. Well where did you get it?

A. Well it was part of my funds.

Q. When was it you took up that stock?

A. This twenty five hundred dollars?

Q. Yes?

A. The fore part of December.

Q. The fore part of December; I hand you a paper marked Exhibit No. 99 and ask you if that is one of the letters you sent out upon the occasion of taking up that stock?

A. Yes sir.

Q. And Exhibit No. 100 was the note of the gentleman to whom that was addressed?

A. Well I expect so, his signature seems to be torn off; at all events that is similar to notes I received.

Q. I call your attention to Exhibit No. 98 and ask whose name you find on there?

A. Judge West, Judge J. S. West.

Q. That is the judge who testified here, isn't it?

A. Yes sir.

Q. What do you say as to whether that was his note and his letter he received from you?

A. I can't say Mr. Robertson when his signature is torn off who signed the note.

Q. Is this your signature on Exhibit No. 99?

A. That is my signature, yes sir.

Mr. Robertson: We offer Exhibits Nos. 98, 99, and 100 in evidence.

(Copies of Exhibits Nos. 98, 99 and [illegible] ed hereto and made a part [illegible].)

Q. Well, then, about December first you took up all the outstanding stock?

A. Yes I took up this stock held by the Topeka stockholders.

Q. You didn't take up the share of Ira Burdick?

A. He held that share as nominal director.

Q. He held that share as a nominal director?

A. Yes it was given to him.

964 Q. Well he assigned it back to you, didn't he?

A. Well I presume he signed it back, he gave it back to me any way.

Q. Well now you increased the capital stock of this corporation from thirty five thousand dollars to sixty thousand dollars seventeen days before that didn't you?

A. Yes sir.

Q. And expected to sell that increase to your friends?

A. Yes sir, or to a partner.

Q. Or to a partner?

A. Yes sir.

Q. How do you go about it to get a partner in a corporation?

A. Well when I say partner I mean a man to come in and take a share in the business, I use the word partner as we generally understand partner, a man comes in and takes a share in the business.

Q. Why then, if you were increasing your capital stock twenty five thousand dollars, either to sell to your friends or to somebody else in order to get the money into your business, why did you spend

twenty five hundred dollars about the first of December to take up these outstanding shares?

A. This increase in capital stock was asked of me by George Guggenheim and he said in this connection, you can sell this stock to your friends the same as the other stock, and I said I thought I could, and in order I might do that I took up these fifty shares that my Topeka friends held and expected later to go back and resell the additional stock; they held one share each of the stock at that time, and if I could show them a great big sale, and a successful sale, and that this company was able to pay a fifty per cent dividend, as I had every reason to believe it would, when they were declared, they would be glad to take an additional four shares each, or five shares altogether, which would take the full amount of the twenty five thousand dollars; at the same time I was considering selling a portion of this stock to a new man in the business, in fact had negotiations pending at that time.

Q. And you tell this court and jury that Mr. Guggenheim  
965 urged you to increase this capital do you?

A. Why he insisted on it.

Q. He insisted upon it and knew all about it?

A. Yes sir.

Q. When did he learn about it?

A. When did he learn about it?

Q. Yes? When did he first learn about it?

A. He suggested it when he was here in October.

Q. When he was in Topeka in October 1913?

A. Yes sir.

Q. Mr. Badders were the sales that you made to Voiland, August and Mills ever entered on your books.

A. They were entered on the books, yes sir.

Q. Do they appear on this ledger? Do they?

A. They are included in bulk I believe in the ledger.

Q. Were they entered on the ledger in any way?

A. I don't — whether they were entered on the ledger; I never made the ledger entries and have never looked over the ledger entries since that time.

Q. Do you know what your total amount of sales in January were?

A. Well, the sales were, the sales were a little in excess of the expenses, not a great deal however; after a big sale of this kind the sales are small, and particularly after the first of the year there is not very much business.

Q. The book here shows sales for January were \$6,995.31 prior to bankruptcy proceedings; what do you say as to whether that is correct or not?

A. I don't know.

Q. You don't know whether that is correct or not?

A. No sir. The original sales slips of all these transactions are in the hands of the receiver and he can verify these statements with the ledger or I could if I had access to them; the sales slips during the entire month of December and January were preserved.

Q. When did you see them in the hands of the receiver?

A. Well I didn't see them in the hands of the receiver but  
966 he has testified he got them.

Q. When did you hear him testify to that?

A. I didn't hear him testify to that; he testified to that at the bankruptcy proceedings; I have seen the record of those proceedings.

Q. Is that what you mean by saying a thing is in testimony because it was introduced at some hearing?

A. Ordinarily not, I am referring to the present trial.

Q. Did you want the court and jury to understand, if not correct, that Mr. Clark had testified to that here on this trial?

A. Didn't I want them to understand that? No sir, I have no idea of suppressing a single fact or detail in connection with my entire business transactions; I will be very glad to answer—

The Court: If you will answer what counsel puts to you the counsel will take care of the balance of it.

Q. Have you a receipt or evidence of payment of this thousand dollars you say you paid to Jacob Cohn & Sons in New York?

A. Well the receipted bill would be in the records of the business.

Q. Sir?

A. The receipted bills would be in the company's papers.

Q. Any such payment appear on the ledger?

A. I don't know, I can't tell you what is in that ledger Mr. Robertson.

Q. Now what collections were made in January prior to bankruptcy, on accounts that people owed the store?

A. What payments were made during January?

Q. Yes sir?

A. No I don't know, they were made to the bank.

Q. The book here shows \$786.90; what do you know about that?

A. Well, there was some, there was some money on account I believe, on accounts, paid at the store; customers had their privilege of paying either at the bank or the store, and when paid at the store they were turned over to the bank. I believe there were some payments that the receiver got; I believe there was just about that  
967 amount that he received, about seven hundred dollars.

Q. Now then Mr. Badders your book shows here that for the months of November and December and up in January at the time you were running that sale that you collected over fifty five thousand dollars, not counting the borrowed money that you have been talking about, and you have the remainder unaccounted for, so far, added to that and you have near sixty thousand dollars. Prior to lunch you accounted for thirty two thousand dollars; I wish you would account for the rest of it?

A. I accounted for more than thirty two thousand dollars I believe Mr. Robertson. I think I accounted for about thirty five thousand dollars. However, you have the figures; in addition to that there was as I have stated this afternoon, twenty five hundred dollars was paid to stockholders taking up this stock.



Q. Well but, twenty five hundred dollars, I have already given you credit for what you paid for the stock.

Mr. Hite: If Your Honor please, counsel should not interrupt the witness.

The Court: Let him answer the question as fully as he may.

A. You want me to give the rest of the payments as I remember them Mr. Robertson, the amounts paid out; you are asking me for additional amounts paid out, or are you?

Q. If you admit that there was that much money collected I want you to account for it?

A. I am not admitting anything about those books; I don't know how many times I have to say I don't know anything about the books.

Q. Prior to going to lunch you testified, if I made memoranda correctly, you said I got about thirty two thousand dollars, and I expended it, to Rosenwald & Weil, \$229.73, one item, didn't you?

A. Yes sir.

Q. What was the next one?

A. Merchants National Bank twelve hundred dollars.

Q. That was not the next one you gave in your testimony.

968 A. I have the same items I gave you I don't — whether in the same order; if you will read yours to me——

Q. No you do the reading?

A. Rosenwald & Weil, \$229.73; Merchants National Bank, twelve hundred; Stein-Bloch Company \$1,866.; Commissions to Mr. Boyd. Burdick and Mrs. Burdick \$515., that includes the dividend also. Paid to Mr. Byers eleven thousand five hundred dollars. To the Bank of Topeka four thousand. To Frank MacLennan five hundred; and to Arthur Capper six hundred; to the Davis Mercantile Company six hundred; miscellaneous items of over six hundred; personal taxes two hundred; attorneys' fees three thousand; and in the store when the receiver took charge \$575; a while ago I believe I said in response to your suggestion it was seven hundred and fifty.

Q. That the only items you have there now?

A. In addition to that I spoke about this five thousand dollars put up to secure this bond on the Badders Clothing Company appeal and twenty five hundred dollars paid to Mr. Graham.

Q. What do you say, beg your pardon?

A. Twenty five hundred dollars paid to the stockholders.

Q. Did you testify about that before lunch, that you paid twenty five hundred dollars to the stockholders?

A. Believe not, no sir I did not; that is the total of the items I testified to before lunch: the Graham note was the last I believe.

Q. What do they total up now, have you added them?

A. Then there was this seven thousand dollar bond matter.

Q. The what?

A. The seven thousand dollar bond matter.

Q. What bond matter?

A. That we talked about this morning, of which five thousand dollars was used in taking care of this appeal bond.

Q. That is already counted?

A. That is according to my figures thirty five thousand dollars.

Q. But you have already entered the appeal bond item once?

969 A. Well I am not entering it twice.

Q. How many times have you deposited that five thousand dollars as guaranty on appeal?

A. Just once.

Q. Who with?

A. I believe with Mr. Mulvane.

Q. Which Mr. Mulvane?

A. John R. Mulvane.

Q. When?

A. At the time the appeal bond was given.

Q. When did you pay the twenty five hundred dollars to Graham?

A. I don't know the date of that, Mr. Graham has testified to the date.

Q. I want your testimony as to the date?

A. I can't tell you Mr. Robertson.

Q. How did you pay it?

A. By cashier's check, it was a cashier's check, Bank of Topeka, get the date that way.

Q. Was it paid before or after bankruptcy proceedings were brought against your house?

A. Before is my recollection.

Q. How long before.

A. I don't know as to that.

Q. What personal taxes were these that you say you paid in the sum of two hundred dollars?

A. They were taxes on the property where I am living and on the lots on College Avenue.

Q. Those are real estate taxes?

A. Yes.

Q. In whose name?

A. When I say personal taxes I mean that I had paid my taxes, I don't mean personal in the sense of furniture or anything like that.

Q. How much did you pay on personal property?

A. Not very much a few dollars.

Q. How much?

970 A. Just a few dollars.

Q. In whose name was this real estate, the house where you live?

A. In my wife's name.

Q. And the College Avenue lots?

A. In my wife's name.

Q. This two hundred for taxes was for taxes on that?

A. On those two lots and on my home; I paid the half tax there as I recall, about fifty dollars, making a total of about two hundred.

Q. What real estate do you own yourself?

A. I own, well I don't own any real estate in my own name.

Q. Sir?

A. I don't own any real estate; well I better modify that, I have got a couple of desert claims in Colorado.

Q. Desert claims, what are they?

A. Well they are desert claims, about as near as I can describe vacant unimproved land.

Q. What are they worth?

A. At the present time, without water on them, no value, no value without water.

Q. Sir?

A. No value without water.

Q. Where are they located?

A. They are located. I have forgotten the county, just a little ways out of Grand Junction.

Q. In whose name are they?

A. They are in my name.

Q. This three thousand dollars deposited with attorney——

A. Let me add in that connection, final proof has not yet been made by me on those.

Q. You say you made a deposit of three thousand dollars with an attorney?

A. Yes sir.

Q. What attorney?

A. D. R. Hite.

Q. Have you made any other deposits with attorneys?

A. No sir.

971 Q. Have you paid any more money than that to attorneys?

A. No sir.

Q. When did you deposit this three thousand dollars with Mr. Hite?

A. Well it was along about the time the bankruptcy proceedings were started.

Q. When did Mr. Hite first become your attorney?

A. Well Mr. Hite first became my attorney, that is, he was actually engaged the day the petition in bankruptcy was filed. That is when his active employment started; I had seen him a time or two before that in regard to some of these suits that had been filed against me.

Q. When did you see him before that?

A. Some time after Christmas.

Q. Do you remember of sending George Thompson up to his office with two arm loads of books and papers?

A. I remember sending Thompson up with some books and papers.

Q. Where did you get them?

A. They were out of the office; do you want to know what they were?

Q. When was that? When was that?

A. I don't recall just the date.

Q. Sir?

A. I don't recall just the date; do you want to know what those books were?

The Court: Answer the question, then if you want to get in anything you can ask him; answer the question as you go, don't break into the narrative we are trying to get now.

Q. I don't care anything about your speeches, I want to know when that was, if you know?

A. I don't know the date.

Q. How soon was it after you talked to Robert Stone in December 1913?

A. I can't say as to that?

Q. Sir?

A. I can't say as to that.

Q. You went to Robert Stone, didn't you, along about December twenty second, 1913?

A. Mr. Stone came up to see me in response to my request.

Q. Well he came to see you?

A. At my request.

Q. At your request; and you had a talk with him as he related here on the witness stand?

A. Yes I think in substance as he related it.

Q. And he refused to represent you further, didn't he?

A. No sir.

Q. Has he represented you any since?

A. No sir.

Q. Didn't he refuse in the autumn of 1913 to represent you any further in your matters?

A. No sir.

Q. Is he mistaken in his testimony on that?

The Court: We will not ask about whether he is mistaken; the witness will answer the question you put to him, and if Mr. Stone has stated differently then that will be a question for the jury.

Q. What was the six hundred account you paid to the Mail Printing Company for?

A. That account, Mr. Robertson, of six hundred dollars, is miscellaneous items of which the Mail Printing Company is a portion; I named over several items this morning and the total I said was approximately six hundred.

Q. What personal property do you own?

A. The stock in the company and household furniture that is all.

Q. Referring again to this *taken* up of the outstanding capital stock?

A. Allow me to correct myself; I also own some coal company stock.

Q. You know Mr. Copeland up there at Topeka?

A. Yes sir.

Q. Remember of having a conversation with him somewhere along about the first of December in Topeka as to the reason why you were taking up your stock?

973 A. I don't recall any conversation; my impression is that I wrote to all my stockholders.

Q. Do you remember having a conversation with Mr. Copeland on the subject at all?

A. I don't recall the conversation.

Q. He had a share didn't he?

A. Yes sir.

Q. And you notified him along with the others that you wanted his share?

A. Yes sir.

Q. Don't you recall he ever calling you over the telephone or speaking to you about it?

A. No sir.

Q. And saying to you, asking the reason why you wanted these shares?

A. I don't have any recollection of a conversation with Mr. Copeland.

Q. And your saying to him, I want to get all the stock in my hands, didn't you say that to him?

A. I don't recollect that I did.

Q. What do you say about that?

A. I don't recollect that I did. It is possible that I said it, however, there is no reason why I should not because I was trying to get all the stock.

Q. Mr. Copeland is up at Topeka, isn't he?

A. That is his residence, yes sir.

Q. Mr. Stern, concerning whom you testified this morning is not here, is he?

A. Mr. Stern?

Q. Mr. Stern, yes?

A. Mr. Stern, I don't know, I understood he was subpoenaed.

Q. Didn't you ask Mr. Adler a day or two ago over in the Hotel Baltimore where his partner Mr. Stern was?

A. Yes and he said he would let me know.

Q. And he did let you know and you wrote it down?

A. He didn't give me the definite address, he said he wasn't sure.

974 Q. Just answer the question?

A. I am answering the question; he said he wasn't sure that he would look it up and advise me further.

Q. And he advised you he was probably at Wilkes-Barre, Penn.

A. He told me he thought he was at Wilkes-Barre but that he would give me his definite address later, and I asked him about it since and he told me he didn't have it.

Q. And you asked once or twice since where Gilmore was?

A. Yes.

Q. And how far is Wilkes-Barre from this city?

A. That is a question in geography, I guess fifteen hundred miles.

Q. You knew where it was?

A. I knew about where Wilkes-Barre is, it is near Philadelphia.

Q. When you started into the business there you say you had five thousand dollars in cash?

A. Yes.

Q. Where did you get that?

A. Well I had that amount in different forms, I liquidated my assets and had about five thousand dollars; I had a paper route, I

carried papers while I was attending school, and I sold my paper route for about eight hundred dollars.

Q. You lobbied some around the legislature during the early part of the year 1911, didn't you?

A. I lobbied there during the legislature, whenever it was, yes sir.

A. No sir. I gathered up some money from the corporations of the state under pretext of fighting a bill they didn't want to go through?

A. No sir.

Q. Didn't do that?

A. No sir. I gathered up some money from the corporations but not under any pretext.

Q. Didn't you represent to the corporations that certain sums of money were necessary for your use to employ attorneys with?

A. Yes.

975 Q. And to pay certain "faithfuls" who had been very serviceable in the resistance to this bill?

A. No sir, it was for the payment of attorneys' fees and expenses in connection with the defeat of the proposed legislation.

Q. And didn't you say there was one or two that had been very useful and entitled to some special consideration and have to give them five hundred dollars apiece?

A. No sir I did not, you know that would be a foolish thing to say in a letter, you know I didn't say it.

Q. Never mind your arguments; I want you to answer these questions?

A. You want me to tell you the details of that transaction; I will do so, and would like to do so.

Q. Where did you have the five thousand dollars that you claim you had saved up to put into this business?

A. Where did I have it?

Q. Yes?

A. You mean after I liquidated my different assets, where did I keep it?

Q. When did you go into this business?

A. I went into this business in November, 1911.

Q. And you say you had five thousand dollars saved up at that time?

A. Yes sir.

Q. Where were you keeping it?

A. Well I had assets of that amount, and reduced it to cash.

Q. What were the assets?

A. I never had five thousand dollars in cash all the time.

Q. What were the assets. Your Honor, I submit this witness should answer the questions and not try to make a speech every time.

The Court: If you will answer the questions put to you we will get along a heap better.

A. I try to.

Q. What were the assets?

976 A. As I stated I had a paper route, I had some lots in Elmhurst that I sold, and my brother let me have some money at that time.

Q. How is that?

A. And my brother let me have some money at that time.

Q. How much?

A. About a thousand dollars.

Q. Well then you borrowed at least a thousand dollars of that five thousand, didn't you?

A. Yes.

Q. Do you know F. P. Metzger, of Topeka?

A. Yes sir.

Q. You remember just a short time, or, at least, yes, a short time, as near as I can get at it, prior to the time you bought into the Robinson Marshall Clothing Company, whatever the name was, of having a conversation with Mr. Metzger about it on the street there near the present site of what was once the Badders Clothing Company?

A. In reference to the buying of the company?

Q. In reference to your intention to get in that store?

A. Why I don't recall any conversation, it is possible I had such a conversation. Mr. Metzger was the president of the bank in which the Marshall Clothing Company had its deposits at that time, and it is possible we had conversations regarding the business of the company.

Q. How long had you been thinking about getting into the clothing store business before you went into it?

A. About three years; I had had my eye on this corner for about three years, practically during the entire time I was Secretary of the Club.

Q. Who is Henry Auerbach?

A. He is one of the partners of the Palace Clothing Company, I believe it is a partnership, at all events he was one of the owners.

Q. And he was prior to the time you went into the Marshall Clothing Company, wasn't he?

A. Yes.

977 Q. And his place of business is about fifty feet away you say from the site of the Badders Clothing Company?

A. Yes sir.

Q. Place of business. You remember having a conversation right along there with Mr. Metzger some time before you went into the Clothing Company?

A. In Mr. Auerbach's presence?

Q. No sir, in presence of you and Mr. Metzger, in which Mr. Auerbach was mentioned by you?

A. No I don't recall any such conversation, I don't talk about my competitors.

Q. Did you in the course of a conversation there say to this Mr. Metzger, in substance this, referring to the Marshall Clothing Company business there, that you was going to buy that concern, lots of money could be made there, and you said to him, "Why look at Henry Auerbach, he is making lots of money, riding around in his

automobile" and things of that sort, "and I can buy that thing and get rich in a darned short time, and I propose to do it." Make any talk of that kind to Mr. Metzger?

A. I don't recall any such talk, however, I might have said a portion of that to him, as I did to others, that I thought there was big money in that corner.

Q. Mr. Metzger then the President of the German American State Bank?

A. At the time I went into business there, yes.

Q. And how long previous to that time had he been?

A. I believe he was cashier, I believe Betts was president, I am not sure as to that.

Q. He was one of the officials of the bank?

A. Yes, he was one of the officials of the bank.

Q. Do you know what the total debts are of the Badders Clothing Company?

A. Well I know about what they are, yes sir.

Q. How did you find that out?

A. Well we went over the books in a general way, we were trying to arrive at a statement at the time the creditors were pressing me.

978 The Court: Proceed with the case.

Q. You say there were minute books made of your so-called directors' meetings down in the basement?

A. There were minutes kept of the directors' meetings, not so-called meetings.

Q. Sir?

A. There were minutes kept of the meetings, not so-called meetings.

Q. They are what you call meetings?

A. Yes sir.

Q. You call them meetings?

A. Yes sir.

Q. Who made these minutes up?

A. I prepared the minutes.

Q. When did you prepare them?

A. After the meetings.

Q. How long after?

A. I think the same day or next day.

Q. Sir?

A. Right along, same day or next day.

Q. Have you the book here?

A. No sir.

Q. Where is it?

A. The book is in the hands of the receiver, the book was left in the vault at the store.

Q. You say that was delivered over to the receiver?

A. I say it was left in the vault, I presume he got it.

Q. This list of stockholders introduced as Exhibit No. 57, where did you get that list from before coming to this trial?



A. Well that list has been in my personal possession ever since I had them signed.

Q. Belongs to the Badders Clothing Company, doesn't it, this list?

A. No sir, does not.

Q. It reads, "I agree to purchase one share of stock in The  
979 Badders Clothing Company at one hundred dollars, the par value of said stock, upon George S. Badders delivering to me with said stock a written agreement wherein he guarantees six per cent per annum upon said stock and agrees to repurchase same any time I want to resell, thirty days' notice being given to Badders." Now that is a matter affecting the business of the Badders Clothing Company?

A. Yes sir. That was my personal stock that was sold to them and that was the reason that was my personal property.

Q. You didn't think the corporation had anything to do with it at all?

A. It was corporation stock.

Q. Did you deliver a share of stock to S. G. Zimmerman?

A. No I don't think Sam got his stock.

Q. Did you deliver a share of stock to Mr. A. E. Billings?

A. No sir.

Q. And did you deliver a share of stock to Mr. F. W. Daugherty?

A. Not sure whether Mr. Daugherty got his or not.

Q. Did you deliver any stock to J. Will Kelly?

A. Well I think I did, however I'm not sure of that. I would like to say that some of those parties didn't take their stock at the time that the balance did, but requested me to hold for a short time, and it is possible Kelly was one of them.

Q. What is the notation over here opposite, "Notdelvd."

A. Not delivered, if that is opposite Kelly's name that means he didn't get his stock.

Q. You didn't notice that read at the time that was read in evidence, not delivered. Did you deliver any stock to L. W. Wilson?

A. No sir he didn't get his, he was to take his later.

Q. Did you deliver any stock to Dr. S. G. Stewart?

A. I don't think so.

Q. Did you deliver any stock to Jno. S. Dawson?

A. No John didn't get his, I took it up one day and he asked me to call around again.

Q. Did you deliver any stock to L. F. Garlinghouse?

A. I am not sure as to his.

980 Q. Or to J. B. Larimer?

A. I think Mr. Larimer got his.

Q. You say he got his?

A. I think he did I am not positive.

Q. I wish you would, if you can, decide one way or the other, like to have you give it?

The Court: If there is anything you know about it, answer it. He says he thinks he delivered it, that is enough.

Q. Mr. Forbes?

A. W. M. Forbes.

Q. Yes sir?

A. I am not sure whether Mr. Forbes got it.

Q. Didn't Mr. Forbes tell you pointedly that he wouldn't take it and didn't want it at all?

A. No sir.

Q. Omer D. Smith, did he take any stock?

A. Yes he subscribed for stock.

Q. Did you deliver any to him?

A. I am not sure as to that but I think I did.

Q. Well if it is marked out here not delivered, then was it delivered?

A. Well it might have been delivered later.

Q. Glen M. Bryan, deliver any stock to Glen M. Bryan?

A. Yes.

Q. And to Geo. W. McClelland?

A. I think he got his.

Q. You say that he did?

A. I think so.

Q. Where does he live?

A. He lives at Topeka.

Q. Where does Glen M. Bryan live?

A. He was living at Topeka at that time, I think his headquarters are at Chicago, or he is at Chicago, his headquarters may be at Topeka.

Q. Did you give any slips to Mrs. Burdick directing the entry of certain dividends and increased salaries and such things as that?

A. Yes sir.

Q. Sir?

A. Yes sir.

Q. I notice that in addition to the dividend account an entry here over in the salary account on page 20 of this ledger, for December \$8269.42; state if you know what made up that item?

A. Well I don't know, I presume that the expenses of the, part of the expenses of the sale may be included in that, amounts paid to clerks during the sale unless it appears in the expense account.

Q. Mr. Badders let me call your attention to this, the monthly totals under salary for preceding month- of the year run this way: January, \$1186.25; February \$1180.25; March, \$1483.50; April, \$1214.81; May, \$842.50; June, \$1602.75; July, \$791.75; August \$1211.16; September \$1305.50; October, \$2046.50; November \$4531.05; December \$8269.43. I wish you would explain those unusual increases in November and December? In those items?

A. How much was it in November?

Q. November was \$4531.05.

A. And December?

Q. \$8269.43.

A. I don't know about the November item but December is expense owing to the fact that we had about, Oh between forty and fifty extra salesmen on the floor, and ordinarily we had five or six salesmen on the floor, and if their expense run eleven hundred, as

you have read, per month, then during the sale, with forty men on the floor it would be about eight times as many.

Q. Forty men; you have forty men there at that sale?

A. Well, employes, there must have been.

Q. How many women were there?

A. There were a number of women.

Q. What were you paying the women?

A. About a dollar and half or two dollars a day.

Q. Mrs. Burdick only getting fifteen dollars a week?

A. Yes sir.

Q. Where do you get this increase of four or five thousand  
982 dollars in this item?

A. I just got through saying there are about seven times as many employes, and if expenses are one thousand a month regularly with seven times as many employes it would be seven thousand.

Q. But what had you been paying to the employes that had been working there regularly, what were your wages to Ira Burdick?

A. He got twenty five dollars a week.

Q. And Mr. Coulson?

A. Twenty dollars.

Q. And Boyd?

A. Twenty five I believe.

Q. And what did Mrs. Burdick get?

A. Fifteen.

Q. Did you pay these girls that you picked up off the street and brought in any such wages as that?

A. Well the sales managers handled that.

Q. You paid the bills, didn't you?

A. Yes. And they were about a dollar and a half and two dollars a day, some of them, and the clothing men were paid a great deal more than that.

Q. I wish you would demonstrate to the jury how you get five thousand dollars of that kind of expenses in December?

A. I just got through saying, that is possible, how it was taken up.

Q. Let's don't have any possible business.

A. Is that a salary account?

Q. Yes sir, this is salary account?

A. That probably covers the salaries. Is there no detailed item there Mr. Robertson, just a lump sum?

Q. Total for the month.

A. Well it can be ascertained from the slips, the notations which are on file somewhere.

Q. Where are the slips?

A. Well they were turned over to the receiver, what he has done with them I don't know.

Q. Yes; let's see how many people did you have in your employment there during the month you had the sale?

983 A. I would say there were forty extra people.

Q. How many had you had regularly?

A. Well, I had three clothing men and two furnishing goods men and a young chap in the Children's Department, that is all on the

floor. And then there was the office force and tailor force used in addition to that.

Q. Well now had you increased your force pretty largely also in November?

A. No.

Q. Been no increase in November?

A. No sir.

Q. Well now the salary items here for September we will say are \$1305; in November \$4531; how do you explain that?

A. Well I don't know anything about those amounts Mr. Robertson.

Q. Do you deny that these entries are correct?

A. I make no statement at all regarding the entries because I have had no opportunity of examining them.

Q. Where would the item for commission to Adler & Company be charged in this book?

A. That might be charged in commissions and dividends if there is such an account, or that might be charged in expense, or that might be charged in salaries.

Q. That may be in the salary account of eight thousand dollars then?

A. It may be, yes sir, I don't know.

Q. What items usually went into what is known as your expense account?

A. Well there were light, telephone, general office expenses, I think sometimes the wages were charged to the expense account, I am not sure as to that, Mr. Coulson can tell you as to that.

Q. The wages naturally go to salary account, wouldn't they?

A. Wages naturally go to salary account but sometimes charged to expense, they are an expense.

Q. What special increase in expenses did you have in December, if any?

A. Well the clerks and advertising and printing, circulars, 984 circular letters.

Q. How many circular letters did you get out?

A. I don't recall, we got out large bills, I think on two different occasions.

Q. You have seen the circular introduced in evidence here, announcing that you are going to start a sensational sale, haven't you?

A. I think I recall your having introduced it, I didn't see it.

Q. That one of the circulars you refer to?

A. I don't know without seeing it, but I presume so.

Q. I hand you Exhibit No. 20 and ask you if that is one of them?

A. Yes sir.

Q. How many of them did you get out?

A. Well this is a letter to creditors.

Q. Well that is a circular?

A. Yes it is a circular letter, but when I spoke before I meant circular letters to customers, prospective customers, this is a circular letter to creditors.

Q. How many of them did you get out?

A. One was sent to every creditor.

Q. How much would the printing cost for that?

A. Not very much.

Q. And how much the printing cost you which you may have sent to prospective customers?

A. Why I don't know, probably one hundred dollars, one hundred and fifty, I can't say exactly.

Q. Now what other expenses can you think of, extraordinary expense, for December, during that sale, not included in salary?

A. That is about all, such as I have mentioned.

Q. I want to call your attention to the condition of this account for December, and ask you to explain to the jury, if you can, why the account is in the condition that it is; this shows that your expenses, as shown by the expense account, page 8 of the ledger, ran, during the year 1913, as follows:

985 It is marked over here, beginning with February, \$194.78, March \$130.51, April \$141.74, May \$98.24, June \$113.46, July \$84.36, August, \$98.36, August 9th, some item here, I can't tell what it is, \$4.05, September 30, \$345.30, October \$190., November \$497.93, December \$6278.41; be glad if you would account for that to the jury?

A. I cannot explain that Mr. Robertson without having access to the original entries and seeing what made up those entries; be merely guess work on my part, might be salaries or percentage to sales manager, any number of items like that might make it up, and I can't say without reference to the original entry; I don't even know that is the correct amount.

Q. Sir.

A. I don't even know that is the correct amount.

Q. Do you say it isn't?

A. I don't say it isn't.

Q. Did you make the newspaper affidavit exhibit No. 69?

A. I will have to look at it. (Handing to witness) I think so, yes sir.

Q. What did you do that for?

A. Advertising purposes.

Q. Have you any other excuse to offer to the jury for making that affidavit.

Mr. Harkless: We object to that Your Honor.

The Court: Need not state about the excuse; he says he made it and I think it has been read to the jury.

Q. This is sworn to before the County Clerk. He says, "For the information of the public at large and my personal friends in particular I wish to state that the sale now being conducted for the purpose of raising \$40,000. to prevent bankruptcy is rapidly nearing a close. The merchandise in this sale includes every high grade suit, overcoat and article of furnishing goods purchased by us for our fall 1913 trade." You knew that statement was in there when you signed it?

A. What is the date of that Mr. Robertson.

Q. December 21, 1913.

A. Yes.

986 Q. You knew that statement was in there when you signed it, did you?

A. Yes sir.

Q. Did you prepare the affidavit yourself?

A. I think I did, yes. The sales managers may have had something to do with it but my recollection is I prepared it.

Q. You say you were not present at the bankruptcy hearing last March in Topeka?

A. No sir.

Q. When you were on trial there?

A. I wasn't on trial.

Q. In the bankruptcy trial?

A. I wasn't on trial.

Q. Well your company was on trial wasn't it?

A. Yes sir.

Q. As to whether it was insolvent or not?

A. Yes sir.

Q. And were you there?

A. No sir.

Q. When did you go away previous to that hearing?

A. Why I went away a couple of days before, as I recall now.

Q. And when did you get back?

A. I got back either the evening of the close of the hearing or the next day. I'm not sure as to the date.

Q. You got back the evening of the day the case was finished?

A. Either that or the next day.

Q. Where did you come from there to Topeka?

A. I come from St. Louis.

Q. Where did you stay in St. Louis?

A. Well, I stayed. I can't give you the name of the hotel, but I can—I don't know whether I can tell you where it is or not, I am not very familiar with St. Louis.

Q. How long had you been there?

A. I think I was there just one day.

Q. How long had this trial lasted in Topeka?

A. I believe the trial started the 5th, is that right, I'm not sure about the date, I think it was the 5th.

987 Q. Didn't you go away about the 25th of February?

A. No sir.

Q. Well when did you go?

A. I went away the fore part of March.

Q. Sir?

A. I went away the fore part of March.

Q. Well now how many days were you gone, tell the jury?

A. Well I was gone about a week as I remember it.

Q. Did you know the case was set for trial when you went away?

A. Yes.

Q. How did you learn it was over before you came back?

A. Why I found out in Kansas City the case had, that the case was on.

Q. No, but how did you find out it was concluded, is what I am asking you?

A. I didn't know it was concluded, at the time.

Q. You didn't know that?

A. No sir.

Q. How did it happen you did come back just as it was concluded and was over?

A. I don't know as to that, I may have been informed before I reached Topeka the case was closed.

Q. Did you stay all this time you were gone in St. Louis?

A. No sir.

Q. Where else were you?

A. I was in Chicago, I was in New York.

Q. You were in Chicago and New York?

A. Yes sir.

Q. Where did you stop in Chicago?

A. I think I stopped at the West Side Y. M. C. A., either there or the Hotel Brevort, sometimes I stop at once place and sometimes the other.

Q. Can't you remember now where you stopped when in Chicago on that trip?

A. No I don't recall.

Q. The day that Mr. Clark took charge as receiver——

988 A. Mr. Robertson, will you——May I suggest, Your Honor  
The Court: Yes.

A. The jury might be interested——

The Court: If you will answer the questions asked by counsel.

Mr. Robertson: We will not have any speeches to the jury.

A. May I say what called me away to these different towns?

Mr. Robertson: Yes, what called you away?

A. There was notices served for the taking of depositions in connection with the bankruptcy proceedings. These notices were served oh I think about seven different notices, as I remember, to take depositions in St. Joseph, St. Louis, Chicago, Syracuse and New York City, all in one week.

Q. Who was your attorney at that time?

A. Mr. Hite.

Q. Did you know that Mr. Hite took the witness stand and swore he didn't know where you were?

A. I don't know as to that; Mr. Hite probably didn't know what particular place I was, but Mr. Hite knew I was off on the matter.

Q. Did Mr. Hite know that you were going away to look after those depositions?

A. I think he did, yes sir, he did.

Q. He did know, did he; he knew where the depositions were to be taken, Mr. Hite did?

A. Well I think so, he gave me some of the notices but whether he kept a record of them or not I don't know.

Q. Now then where was the first deposition to be taken?

A. Well I can't say as to that.

Q. Where was the second one to be taken?

A. Either in St. Louis or Chicago.

Q. Notices were served to take these?

A. Yes sir.

Q. Have you the notices?

A. No sir.

Q. Did you call on any attorney in St. Louis?

A. No sir, I called up the office of Mr. Swartz who was the attorney representing the Rice-Stix Dry Goods Company, who  
989 were petitioning creditors and was told that Mr. Hite was not there; was also told there would probably be no depositions taken, to call up Mr. Hite from St. Louis and was told——

Q. You called up Mr. Hite from St. Louis?

A. Yes.

Q. The case was then in progress in Topeka, Wasn't it?

A. Why I don't think so; I think these notices were served, I know they were served to take depositions before the trial and——

Q. Hadn't you been refusing right straight along the line to testify in any of these bankruptcy proceedings?

A. Yes sir.

Q. Didn't you refuse upon different occasions before Judge Slonecker who had the one branch of this matter in hand, under directions of the Judge of this court, didn't you refuse to testify at all?

A. Yes sir.

Q. You did, however, answer a few questions upon one particular occasion?

A. I answered a few nominal questions as to my residence and my official capacity with the company and so on.

Q. Just a few nominal questions?

A. Yes sir.

Q. Didn't you upon that occasion answer a question as follows: "What is the capital stock at this time of the Badders Clothing Company by saying thirty five thousand dollars?"

A. I don't recall the testimony.

Q. Did you not at a hearing before J. G. Slonecker, Special Master, at Topeka, Kansas, January 23, 1914, testify in answer to questions, as follows: "What is the Capital stock at this time of the Badders Clothing Company," and you answered "thirty five thousand dollars."

A. I don't recall having so testified, the statement of the increase was on file for six weeks before that.

Q. I wish you would cut out your argument sir and answer my questions.

A. I am answering the question.

990 Q. Was this question asked you, "Is that fully issued," and you answered "yes sir" upon that occasion.

The Court: The question is, was that question asked you and did you give that answer?

A. I presume so.



Q. "And how many shares of stock do you own," and you answered "I own the entire stock"?

A. I presume so.

Q. And were you not asked this, "You owned the thirty five thousand dollars," and you answered, "Yes sir"?

A. I don't know as to that.

Q. Sir?

A. I don't know as to that.

Q. What do you say as to whether you testified to that or not?

A. I said I didn't know.

Q. Sir?

A. I said I didn't know.

Q. What is your best recollection about it?

A. Well my best recollection is that a portion of them are correct and possibly all of it.

Q. Well do you say there is any of it incorrect?

A. No I don't say so.

Q. And upon being directed and ordered upon that occasion to testify didn't you and your attorneys take such measures through certain courts in this country as to prevent your being required to testify.

Mr. Hite: Your Honor, we don't think this is proper.

The Court: Well, he says he testified to part of it, now where is it in this deposition he refused to testify.

Mr. Robertson: Just the next question.

The Court: Go on and see what he says about it.

Mr. Robertson: The witness says he simply answered a few formal questions.

The Court: Go on and see.

Q. Was this not followed with this question: "In whose name is any of the shares held for you", and did you not answer, 991 "Only a few qualifying shares as directors, the stock is all in my name?" Sir?

A. I think so.

Q. And was not this question put to you, "You have bought up all the outstanding stock," and you answered, "yes sir"?

A. I think so.

Q. And this question was put to you, "During the past few months have you purchased stock from others holding stock", to which you answered, "If your Honor please, I refuse to answer this question on the advice of counsel who informs me the court has no jurisdiction to require me to submit to examination at this time?" Did you not make that answer?

A. Yes sir.

Q. And then did not the referee say, or the Master, upon that occasion, who was Judge Slonecker, "You decline then to answer any other questions under this order for that reason," and you answered, "Unless there should be more questions such as asked up to this point, I refuse, I respectfully refuse." Didn't you answer that question in that way?

A. Yes sir.

Q. And you did refuse to testify?

A. Yes sir. May I state further why I refused?

Q. No sir, I will let your attorney take care of your reasons.

Mr. Hite: We think the witness should be permitted to explain.

The Court: He is asking from a record whether certain questions were asked and certain answers given, and if the witness says yes, that is the end of that inquiry at that time.

Mr. Hite: I didn't catch what he was doing.

The Court: That is what he has been doing on this deposition.

Q. You signed Exhibit No. 35, the contract with the Stein-Bloch Company, dated November 8, 1913, didn't you?

A. I think so.

The Court: That is the one to which his attention was called on examination in chief?

A. Yes, if that is the same one I signed it.

Q. How long was it after that was drawn up before it was fully executed?

A. Well there were several similar contracts and the one,  
992 as signed, I think was about three weeks after they started to drawing.

Q. Who signed this first, you or the Stein-Bloch Company?

A. I don't recollect as to that, I believe however I did, but I am not sure.

Q. Who sent it to the Stein-Bloch company?

A. I don't know whether I mailed it to the Stein-Bloch Company or gave it to McClintock, either one or the other.

Q. Isn't it a fact Mr. Badders it was a week or ten days after your signature was attached to this before it was even mailed to Stein-Bloch Company?

A. After my signature was attached, I don't know as to that.

Q. Sir?

A. I don't know as to that.

Q. What payments you ever make under this contract?

A. I paid Stein-Bloch Company twenty five hundred dollars the middle of November and \$1866.88, if I recall the exact amount in December.

Q. Now then the Stein-Bloch Company provided a way by this contract for continuing your debt there, hadn't they?

A. For continuing the debt?

Q. Yes, extending it along?

A. Yes.

Q. So it could be paid in partial payments?

A. Yes sir.

Q. And the first general payment of five hundred dollars on this contract was set for the 15th of January, wasn't it?

A. Ask that question again.

Q. The first general payment you were to make on this contract after the ones you have spoken of was on the 15th of January?

A. Well I had to pay off five thousand dollars before the January payment under the contract.

Q. But you were to make a payment on December 20th of \$3388.81, hadn't you?

A. Yes.

Q. You were to do that?

993 A. Yes.

Q. If you had made that payment on time there wouldn't have been anything delinquent under this contract until the fifteenth of January, would there?

Mr. Harkless: Your Honor, we object——

The Court: The contract speaks for itself.

Mr. Robertson: That is probably true.

Q. You knew what the terms of the contract were?

A. Yes sir I knew all about the contract.

Q. And you had the money sufficient to pay this check that you sent out for this \$3366.

A. Yes sir.

Q. And you could have complied with the terms of the contract?

A. Yes.

Q. You had the ability to do that, had the money?

A. Yes sir.

Q. Who did you approach to sell shares of the twenty five thousand dollars increase of capital?

A. No one. Well I might modify that with this, I was in negotiations with a party to take a substantial interest in the business, but as to seeing Topeka people in reference to buying stock I hadn't seen any one.

Q. At the time you voted this dividend down in the basement in May, and all these salaries and commissions that have been told about here, did you have before you a statement of the condition of the Badders Company?

A. You mean did I take a statement down there with me?

Q. No, did you have one at all?

A. Oh yes we made statements every month.

Q. You made statements every month of the condition of your business?

A. Yes.

Q. What time in May did you go down stairs with Burdick and Boyd for this purpose?

A. I don't recall the date in May.

Q. How much cash did you have on hand at that time?

A. Why I can't say as to that.

994 Q. Sir?

A. I can't say, the bank account will show.

Q. What was your merchandise account at that time?

A. I don't recall, I can't give any statement of the financial condition of the company Mr. Robertson at any particular date.

Q. Then how can you tell the jury that the company was perfectly solvent at the time that you had this meeting in the basement?

A. Because I looked at the statement at the time and know that it was perfectly solvent.

Q. Didn't your business at that time show an impairment in capital stock of nearly one thousand dollars?

A. No sir, it did not.

Q. I hand you a paper marked Exhibit No. 107, and ask you if you ever saw that before? Sir?

A. I believe that is a statement that I have seen, I can't tell Your Honor without looking at the items carefully. I think so.

Q. Look it over, didn't you send that to Stein-Bloch, don't you see their receiving stamp upon it?

A. Yes, I see the receiving stamp on it, I expect that is the statement that I sent them.

Mr. Robertson: Offer Exhibit No. 107 in evidence, as part of the cross examination of this witness.

(A copy of Exhibit No. 107 is attached hereto and made a part hereof.)

The Court: Gentlemen, you may take a recess of ten minutes.

(4 O'CLOCK P. M.)

Q. Who was secretary of the Badders Company in May, June and July and August?

A. S. R. Graham.

Q. When did he become secretary?

A. Well I have forgotten the exact date, but he was secretary during July and August I am sure.

Q. When was he elected?

A. I don't recall that.

Q. You don't recall when; was there a minute made of his election?

A. Yes sir.

995 Q. Who was present when he was elected?

A. Mr. Boyd and Mr. Burdick and myself.

Q. When did you advise Mr. Graham of his election as secretary?

A. Well, I don't know, right away after his election.

Q. In what manner did you advise him?

A. In what manner?

Q. Yes?

A. Well I think he was down at Topeka and I told him personally, it is possible we covered the matter with correspondence, I am not sure as to that.

Q. He had a desk there in the store did he?

A. No sir.

Q. I notice on page 26 of the ledger introduced in evidence, an item under date of December 28th of secretary's commission \$297.94; what secretary was that for? Intended for?

A. That was secretary's commissions as outlined at the May meeting of the board of directors.

Q. You gave Mrs. Burdick a slip covering that, did you?

A. Yes.

Q. And you gave her a charge slip for an item of twenty five per cent commission to you on sale of stock twenty five hundred dollars?

A. Yes sir.

Q. And you gave her a charge slip also for fifteen per cent commissions on a year's business in excess of fifty thousand dollars amounting to \$9420?

A. Well I gave her the charge slip, I don't remember the amount. I presume however that is correct.

Q. And did you give her another charge slip for a dividend under date of, the date of slip being December 31, 13, a dividend in the sum of \$8750?

A. I gave her a check for a dividend, I have forgotten the amount of it.

Q. And did you write a check on the bank for that amount?

A. Write a check on the bank?

Q. Yes?

996 A. No sir.

Q. There was no money in the bank at that time?

A. On December 31st?

Q. Yes?

A. No sir.

Q. And there was no money there subsequent to the 23rd of December, 1913, was there?

A. No sir.

Q. Have money in any other bank than the Bank of Topeka, except the German State?

A. No sir.

Q. And did you give Mrs. Burdick a slip under date of December 31, 13, a charge slip, covering a dividend of \$4158.54?

A. For what was that?

Q. A dividend?

A. I think so yes sir.

Q. Then these entries under this heading of commissions and dividends, page 26 of the ledger are correct?

A. Why I think so. I couldn't tell without seeing my original slips I gave her, but I would say they are.

Q. You say ten dollars was the only money you had on deposit in any bank there after the 23rd of December, 1913?

A. That is the only money on a checking account, yes sir.

Q. Did you know and understand at the time you deposited that ten dollars with the German American State Bank that it was a felony to draw checks on a bank where you didn't have any — at all?

Mr. Hite: If Your Honor please we object to that.

The Court: Sustained.

Q. Did you hear the testimony of Mr. Speizberger regarding this letter headed "Dear Al" and introduced as Exhibit No. 51?

A. Yes sir.

Q. Does this letter tell the truth?

A. Portion of it perhaps.

The Court: Who wrote it?

997 Mr. Hite: Mr. Graham wrote it.

Mr. Robertson: Mr. Graham wrote it but the testimony was Mr. Badders said he wrote it for him.

- A. Well I never have seen the letter.
- Q. Never seen a copy of it?
- A. No sir.
- Q. (Handing letter to witness.)
- A. This is the one you read?
- Q. Yes sir?
- A. I never have seen the letter.
- Q. When did he tell you he had written this letter?
- A. Mr. Graham told me he had written a letter of that kind is all I know about it.
- Q. When did he tell you he had written this letter?
- A. What is the date of the letter?
- Q. December 24th, Christmas eve, 1913.
- A. I believe that is the same day he told me he had written the letter.
- Q. Were you over there with him, to the Y. M. C. A. that evening?
- A. Yes sir.
- Q. It was written over there that evening, wasn't it?
- A. I don't know as to that, I didn't see this letter written, I never saw the letter before.
- Q. Were you over there with Mr. Graham Christmas eve?
- A. Christmas noon we took lunch together, I believe.
- Q. You say you never read this letter?
- A. No sir.
- Q. Did you hear me read it to the jury?
- A. Yes sir, I heard you read it, yes sir.
- Q. What did you say to Mr. Graham when he told you what was in the letter?
- A. Well he told me the substance of the letter and I told him he could write any kind of a letter he chose to Mr. Decker but he couldn't pretend to convey my ideas at all to Mr. Decker.
- Q. This letter then does not in any manner represent your ideas?
- A. No sir Mr. Graham was not authorized to write any letter for me.
- Q. Didn't you tell Mr. Speizberger there in Topeka this letter was written by Mr. Graham for you and this explained everything?
- A. No sir.
- Q. You said nothing like that to Mr. Speisberger?
- A. No sir. Mr. Graham told me he would write another letter.
- Q. That he would write another letter?
- A. Yes sir.
- Q. Did he write another letter?
- A. He told me he would and I presume he did. I am rather under the impression he sent me a copy of the second letter.
- Q. Well do you know where the copy is?
- A. No I do not. It may be in the company papers, it may be in my personal letter file, I am not sure as to that.
- Q. Did you hear the testimony of Mr. Speizberger here?
- A. Yes sir.

Q. Did you have any intention at that time of protecting the account of Alfred Decker & Cohn in preference to other of your creditors?

A. No, not in preference, I have always expected to pay my creditors.

Q. Yes. You didn't know what was in this letter you say as I understand you now?

A. No sir.

Q. Did you know Mr. Alfred Decker?

A. Yes sir, I know Mr. Decker.

Q. And did you know he and Mr. Graham were good friends?

A. Yes sir.

Q. Did you know how long they had been acquainted?

A. They were young men together I understood.

Q. Are you and Mr. Graham pretty good friends?

A. Yes sir.

Q. You are very intimate personal friends?

A. Yes sir.

Q. I hand you a paper marked Exhibit No. 52 and ask you to state if that bears your signature?

A. Yes, that looks like my signature.

999 Mr. Robertson: Offer Exhibit No. 52 in evidence, as part of the cross examination.

The Court: Read it sir.

Mr. Robertson: Reading Exhibit No. 52.

(A copy of Exhibit No. 52 is attached hereto and made a part hereof.)

Q. Now you say that about January first you were getting out a statement of your business?

A. Yes sir.

Q. Were you called upon by Mr. Barnum about some claims he had?

A. Yes sir, he was there.

Q. And were you called upon by Mr. Newell?

A. Yes sir.

Q. And this young man here, Mr. Quant?

A. Yes sir, Mr. Quant of McClintock and Quant.

Q. He is Mr. Quant of McClintock and Quant?

A. Yes sir.

Q. And you were called upon by Bennett R. Wheeler?

A. Yes sir.

Q. Did you tell any of these men that you were getting up a statement of your business which you would show to them and you would be able to explain everything to them?

A. I think I told all of them that.

Q. You heard their testimony here, didn't you?

A. Yes.

Q. Mr. Quant called upon you a good many times?

A. Yes sir.

Q. Did he ever present any particular account against you?

A. Yes.

Q. I mean did he ever go up there with simply one account and ask that you pay that one?

A. Oh yes lots of times.

Q. Didn't he upon all occasions go there representing all the creditors he represented?

A. No sir, he was endeavoring to get a payment of any kind.

Q. He was endeavoring to get a payment of any kind. Didn't they present their claims just as rapidly as they got a claim 1000 they called your attention to it?

A. I think so.

Q. Didn't they bring some suits against you in the city court there or the justice court?

A. They brought suits in all the local courts there.

Q. And didn't they upon several occasions before they brought suit come to your office and say, now Mr. Badders shall we bring suit under this claim, aren't you going to pay it, didn't that happen several times.

A. I think they did, yes. They didn't say it just that way however.

Q. Didn't they call upon you upon several occasions after you had refused to pay the accounts and say, now we are going to have to bring suit?

A. No they didn't say that, they said we are going to bring suit.

Q. And didn't they give you an opportunity to pay these claims without bringing suit?

A. Certainly.

Q. Yes sir. Do you remember of having a talk with Mr. W. S. McClintock, the senior member of the firm of McClintock & Quant about the twenty five thousand dollars increase of capital?

A. I don't remember talking with them about the capital stock, I had several conversations with Mr. McClintock, however, I may have discussed that, I don't know.

Q. Do you remember of having a conversation with Mr. McClintock in which you told him this twenty five thousand dollars of capital stock was subscribed by three responsible parties?

A. No sir I never told him anything, never made any such statement.

Q. Did you have a conversation in which you told him that stock was subscribed for by three parties, one of whom was going to take ten thousand dollars of it, another twelve thousand, and another three thousand?

A. I did not.

Q. Never had that sort of a conversation at any time?

A. Never.

Q. And didn't you say in that conversation that you were 1001 not at liberty to advise him who they were?

A. Did not.

Q. Did C. W. Milton call on you in regard to claims?

A. Yes sir.

Q. He is in some manner connected with the firm of McClintock and Quant?



A. Yes he is connected with them.

Q. He is a young lawyer that has an office there with them, isn't that true?

A. I believe so, yes sir.

Q. Did he call on you often?

A. Yes Mr. Milton came up to see me frequently.

Q. And did you get a little bit out of sorts on account of his coming?

A. No sir, Mr. Milton and I got along fine.

Q. Don't you remember of having a talk with him there one day in December in your store building, December 1913, upon which occasion you pulled a bunch of keys out of your pocket, and referring to them and swinging these keys around with your fingers, said, "I just been hoping that you fellows would attempt to take these away from me and then I would have enough to retire on?"

A. No sir.

Q. Have any such conversation with Mr. Milton?

A. No sir.

Q. Make any such statement?

A. Never.

Q. To him. Never at any time?

A. Never.

A. I may have told either Mr. Milton or Mr. McClintock or Mr. Quant that I would like to see them run an attachment.

Q. Why would you like to see an attachment?

A. Because the damages would have been perhaps sufficient to have—

Q. Did you tell Mr. Speisberger and Mr. Guggenheim that you would make rosenwald & Weil pay well for that attachment  
1002 they run on your bank account down at the Bank of Topeka?

A. I may have.

Q. Didn't you tell Mr. Speisberger when he was there along the very last week of 1913 that you had between twenty and thirty thousand dollars down in the Bank of Topeka?

A. I did not.

Q. And that Rosenwald & Weil had a garnishment on it?

A. Yes sir.

Q. And that you couldn't pay his claim for that reason?

A. Yes sir.

Q. And you wouldn't reduce it because you wouldn't have it released down so as to get money for your creditors because you wanted to make Rosenwald & Weil smart for it in damages?

A. The latter part yes, but the first part of your question no.

Q. Isn't it true on December 27th you didn't have a cent in the Bank of Topeka?

A. No sir.

Q. That is not true?

A. No sir.

Q. How much money did you have on December 27, 1913?

A. There was a small deposit there.

Q. How much was that Rosenwald & Weil claim?

A. The total claim?

Q. Yes?

A. About nine hundred dollars, I believe.

Q. You say you bought cheap stuff when you were in New York?

A. Yes sir.

Q. Cheap stuff, why did you buy cheap stuff?

A. For the purposes of the sale.

Q. Well what do you mean by that?

A. Well in a sale you want merchandise that you can buy cheap so as to get the profit out of it.

Q. You bought it to make money out of it, didn't you?

A. Yes.

Q. Your idea was that you could make more money out of that than you could the other stuff?

A. Yes.

1003 Q. How much money has this Mr. John R. Mulvane got belonging to you or the Badders Clothing Company at this time?

A. Why he has got, I don't know whether he has got it or not, this five thousand dollars that was put up as guarantee of this bond on my appeal from this former trial, that is all he has.

Q. But no other deposits any where with anybody?

A. No only as stated.

Q. Sir?

A. Only as stated.

Q. Only as stated by you? They have the eleven thousand dollars of your book accounts or whatever may be left of them?

A. Yes sir.

Q. You say you had a talk with Mr. Stern about shipping these fourteen cases of goods out that went to St. Joe and Kansas City?

A. Yes.

Q. When was that?

A. About the middle of December.

Q. Who was present?

A. Mr. Stern and I.

Q. Where did you talk about it?

A. In the store.

Q. Where was Mr. Adler?

A. I don't know whether he was in the store or not, I presume he was.

Q. Where was Ira Burdick?

A. The boys were all there I presume.

Q. Anybody hear you talk?

A. I don't know as to that.

Q. How many times did you talk to Mr. Stern about sending the goods out under fictitious names?

A. We talked it over two or three times, not to speak of them as fictitious names however.

Q. Well they were fictitious names?

A. Yes they were names that just occurred to me.

Q. When did Mr. Stern leave there?

- A. Christmas eve.
- 1004 Q. Where did he go?
- A. I don't know.
- Q. Have you ever seen him since?
- A. I don't think I have.
- Q. Have you ever heard from him?
- A. Yes I have got a letter or two from him.
- Q. About these boxes?
- A. No.
- Q. Didn't you ever hear from him about the boxes?
- A. Well he sent me the freight bills.
- Q. Sir?
- A. He sent me the freight bills.
- Q. Sent you the freight bills?
- A. Yes sir.
- Q. Did he send you a letter with the freight bills.
- A. I think so.
- Q. Have you the letter?
- A. No sir.
- Q. Sir?
- A. No sir.
- Q. Where is it?
- A. Well I don't know as to that, may be in my files.
- Q. Where are the freight bills?
- A. They are in the company files.
- Q. Where are your files in which this letter from Mr. Adler appears?
- A. I say it might be in my personal file.
- Mr. Hite: You mean Adler or Stern.
- A. In Topeka.
- Mr. Robertson: I have not been talking about anybody but Stern.
- Q. Where are your personal letter files.
- A. My personal letter files are at Topeka.
- Q. You didn't bring them with you?
- A. No sir, I brought such letters as I thought would be of service in the case.
- Q. Who suggested—these boxes went to St. Joe on three
- 1005 different railroads, who suggested that?
- A. I don't know.
- Q. They were shipped on three different railroads, weren't they?
- A. Yes sir.
- Q. Why was that?
- A. Well that was done because we didn't think all ought to be shipped over one road.
- Q. What was the reason they shouldn't be shipped over one road?
- A. So the Topeka competitors there wouldn't get onto the fact that goods were going out. That was Stern's idea at least.
- Q. That was Stern's idea?
- A. Yes.
- Q. Weren't you present at a certain preliminary hearing that was

held of you before Judge Garver in the City of Topeka some time last April?

A. Yes sir.

Q. And wasn't Mr. Stern there?

A. Yes sir.

Q. And did your attorney ask him anything about that upon that occasion?

A. I don't recall whether he did or not.

Q. How is that?

A. I don't recall whether he did or didn't.

Q. When were these goods shipped from St. Joe to Kansas City?

A. Well it was some time, I think it was about the 26th of December but am not positive as to the date at all.

Q. About the 26th of December?

A. Yes, I am not sure of that date.

Q. When were these goods shipped that went direct to Kansas City from your store?

A. I think about between the 15th and 20th, about the 20th, I would say.

Q. When were the goods shipped that went to St. Joe?

A. About the same time.

Q. All about the same time?

A. Yes sir.

Q. Did you call Mr. Graham down in Oklahoma to have  
1006 him to go get those boxes?

A. Yes sir.

Q. Why didn't you go to Kansas City and get them yourself?

A. Because Mr. Graham went to Kansas City quite often and I just called him up and found out he was going, I anticipated his being there about that time.

Q. Didn't it ever occur to you to go yourself or get some of your friends in Topeka to look after that?

A. I suppose I could.

Q. Why didn't you?

A. Because I did it the other way.

Q. How much did the telephone toll cost you to Oklahoma?

A. I don't recall.

Q. Seven dollars and a half, wasn't it and that would be more than paying the expenses of a person from Topeka to Kansas City?

A. I don't know Mr. Robertson, I couldn't leave myself and I wanted some one I had confidence in.

Q. You had confidence in Ira Burdick?

A. Yes sir.

Q. Good fellow, isn't he?

A. Yes.

Q. Couldn't you have sent him?

A. Yes.

Q. Your father-in-law was around there, wasn't he?

A. Yes.

Q. You could have sent him?

A. Yes.

Q. Didn't you call Mrs. Graham before you called Mr. Graham?

A. Yes.

Q. You called Mrs. Graham up here in Hiawatha and asked where Mr. Graham was?

A. Yes.

Q. And you paid long distance toll on that, didn't you?

A. Yes.

Q. And found out where he was?

A. I wanted to see Mr. Graham aside from having him attend to——

Q. What is that?

1007 A. I wanted to see Mr. Graham aside from having him attend to these goods.

Q. When did you see him.

A. I didn't get to see him.

Q. Well you sent the ware house receipts and necessary evidence by which to get these packages to Mr. Graham at the Baltimore Hotel in Kansas City?

A. I did.

Q. Had you paid Graham the twenty five hundred dollars at that time?

A. I don't think so, I think it was paid, I don't know whether it was paid before or after that time.

Q. Right about that time, wasn't it?

A. I can't say as to the date.

Q. Now then you say that it hurts a man's credit to have a check sent by the wholesale house, as in the Stein-Bloch case, direct from the house to the bank for collection?

A. Yes sir.

Q. I wish you would just tell the jury how that can be true?

A. I thought I explained it this morning, but briefly this is it: Checks are ordinarily deposited, for instance in case of Stein-Bloch's, in their bank in Rochester, and it goes from the clearing house in Rochester and forwarded from Rochester either to Kansas City Clearing House or possibly to the Topeka Clearing house.

Q. Answer my question, how does it hurt a man's credit?

A. I am answering it Mr. Robertson.

Q. No you are not.

Mr. Hite: We would like for the Court to determine whether this is not preliminary to answering the question.

The Court: Do you know how it affects a man's credit to have a check sent direct to the bank for collection or sent through some other agency for collection.

Mr. Robertson: Question withdrawn.

Q. What hurt could it have done you under the circumstances to have taken the money and paid the check and taken it up, how could that injure you?

1008 A. By having the check sent direct?

Q. Who knew the check was sent direct besides you and Stein-Bloch and the bank?

A. No one.

Q. Yes sir.

A. Not to my knowledge.

Q. You were being sued once in a while in the city court and District Court there?

A. In the latter part of December yes.

Q. You appeared in a lot of these cases yourself as your own attorney?

A. Yes sir.

Q. Filed motions for continuances yourself?

A. Well yes, in one or two cases.

Q. Filed numerous affidavits in which you swore that for want of material testimony which you could not obtain you were not ready to proceed to trial, didn't you, and thus obtained a statutory period of continuance, which the statutes allow, isn't that true?

A. We appeared and asked for continuances once or twice.

Q. Didn't you file such affidavits?

A. I may have.

Q. Did you ever afterwards produce the material testimony?

A. The cases were all——

Q. Answer the question?

A. No sir, never.

Q. In the shipping of these cases of goods around to St. Joe and Kansas City and back to Topeka, was the same name ever used the second time, were the same names used the second time?

A. I don't know. I didn't handle that.

Q. You furnished the names you said a while ago?

A. For shipping them out. I don't know anything about them afterwards, I know they came back to the Badders Company.

Q. Who did furnish those names?

A. Mr. Stern had charge of the matter.

Q. Well these were shipped on the 26th day of December 1909 from St. Joe to Kansas City?

A. Yes, Yes that is my understanding, I don't know as to that.

Q. You say Mr. Stern was there on December 26th looking after that matter.

A. No sir, I don't say that, I was not present and don't know whether Mr. Stern did it personally or had it done.

Q. Didn't you know Mr. Stern left your place on the 25th of December?

A. Twenty fourth.

Q. The night of the 24th?

A. Yes.

Q. And went direct to Toledo Ohio.

A. I don't know where he went, he went with Mr. Adler.

Q. And Mr. Adler you knew was going to Syracuse New York?

A. I didn't know, they didn't tell me where they were going.

Q. And in whose names were these boxes stored in Kansas City?

A. I don't know as to that.

Q. You sent the warehouse receipts to Mr. Graham?

A. Yes.

Q. The names of the parties were on the ware house receipts, were they not?

A. I suppose so, yes sir, they usually are, yes sir, my impression is the name Donaldson is the name, Donaldson, I am not positive as to that.

Q. Where was Adler and Stern when you gave these names to Mr. Fennimore to write on these boxes?

A. They were at the store.

Q. Sir?

A. They were at the store I presume or at the hotel.

Q. Who looked after the shipping of those boxes you or Mr. Stern?

A. You mean shipping them out of Topeka?

Q. Yes sir?

A. I attended to it.

Q. Yes sir. Could you produce an individual who ever saw Mr. Stern have anything to do with shipping your boxes any place?

A. No sir.

Q. Have you tried to find any such a person?

A. No sir.

Q. Have you endeavored to take the deposition of Mr. Stern?

A. No sir.

Q. Have you tried to subpoena him here to attend this trial?

A. I understand he was subpoenaed by the government.

Q. Who told you that?

A. I thought it was on the indictment, he was present at the Grand Jury hearing and I supposed of course he would be here.

Q. Have you made any return to the tax assessor for the year 1914?

A. No sir.

Q. Did the assessor call on you in the spring of 1914?

A. Yes sir.

Q. And you refused to make him any return?

A. I didn't refuse to, I didn't make a return.

Q. Haven't you been asked by the county officials to come down there and appear before the Board of county commissioners or whoever has charge of those matters, and didn't you decline to do so?

A. No sir.

Q. Didn't you appear there?

A. No sir.

Q. Didn't you have a representative who appeared for you?

A. Yes sir.

Q. And stated that you couldn't appear there and answer those questions?

Mr. Hite: If Your Honor please if he didn't appear there he couldn't have made——

Mr. Robertson: Because it might incriminate you?

Mr. Hite: We object to that, Your Honor, and ask that the jury be instructed to pay no attention to it.

The Court: He asks whether his representative was instructed to make that statement to this board of—

Mr. Hite: It would be a privileged communication, and it would be improper any way what somebody else said down there.

1011 The Court: Did you have a lawyer at the time?

A. Yes sir.

Q. Who was it?

A. Mr. Hite.

The Court: Well we will not go into any conversation that took place between the lawyers in the matter.

Questions by Mr. Robertson:

Q. Did you ever talk to any of these officials yourself?

A. No sir.

Q. Wasn't you visited by a representative of the government asking you to make return for income under the income tax law?

A. Yes sir.

Q. And did you make him any return?

A. No sir.

Q. You say that your firm was perfectly solvent at all times?

A. Yes sir.

Q. Well now Mr. Badders if your company was perfectly solvent all the time why would you have any fear of making a payment to anybody?

A. Well Mr. Robertson I will answer that this way.

Q. Answer the question; I don't want any speech from this witness; like to have an answer to this question.

The Court: If it was solvent at all times why didn't you pay the debts?

Mr. Robertson: That is it.

The Court: I have put that question that way, that is legitimate.

A. Because the payment of a debt under the circumstances would have subjected me to the filing of a petition in bankruptcy against me if the company were proven insolvent. It is possible for petitioning creditors to make any man's business insolvent if a petition in bankruptcy is filed against him, and his stock is sold out at an enormously reduced price, as is quite frequently the case in matters of this kind.

Q. Yes but before anything like that can be done, and his business closed up, he is entitled to a jury trial, isn't he?

A. Well I presume so yes sir.

1012 Q. And didn't your firm have a jury trial upon that subject?

Mr. Hite: Object to that, Your Honor.

The Court: We will not go into that jury trial.

Mr. Robertson: I withdraw it.

Q. Coming back to this, Mr. Badders, I understand from your direct examination that you are an attorney? Member of the bar?

A. Well, yes, I never practiced.



Q. You have practiced some I understand, looking after your own business anyhow?

A. Little, yes sir.

Q. Yes sir. Out in Denver in a law office three years?

A. Yes sir, handling collections.

Q. Work for Charles Blood Smith in his law office?

A. Handling collections.

Q. And you want to tell this jury that you think a man running a solvent, going business, that he may be afraid to pay his creditors?

A. No sir, need not be afraid to pay his creditors except in circumstances that I was thrown into, then a man better be careful.

The Court: That is far enough on that matter.

Mr. Robertson: I think that is all.

The Court: Now this chief examination took a good while, and this cross examination, and if you have anything growing out of this present inquiry, but I don't want you to go over this thing any more.

Redirect examination.

Questions by Mr. Hite:

Mr. Hite: I will confine myself very closely Your Honor.

Q. Mr. Badders your attention has been called repeatedly to entries in this ledger that has been offered in evidence, I will ask you to state to the jury whether you have seen the entries to which your attention has been called?

A. No sir I never have been given an opportunity of seeing it.

Q. You were asked with reference to the amount of loans in the month of November, 1913, that you had from the Bank of  
1013 Topeka; Now in what shape would the information with reference to those loans appear in detail in your records there of the clothing company?

A. They would appear as a loan from the bank.

Q. And the details of it would appear in some book? Would they not?

A. Yes, or by a slip that would be in the day's business showing what it was for, borrowed money.

Q. I judge from your testimony that those loans or notes executed in that month amounted to about nine thousand dollars, and that one or more of them was a renewal.

A. I think only one, I am not positive as to that.

Q. And that some of these accounts were put up as collateral.

A. Yes sir.

Q. Now Mr. Badders in this itemized statement you gave this morning of the disbursements you had made out of the thirty two thousand dollars, you say came into your hands, did you include any disbursements made prior to the sale and subsequent to the bankruptcy proceeding except the seven thousand dollar matter?

A. No sir.

Q. Now prior to that sale did you make any disbursements?

A. Well I mentioned twenty five hundred dollars paid to stockholders that was before the sale.

Q. Now did you pay any notes to the Bank of Topeka, pay any money to the Bank of Topeka aside from this four thousand dollars?

A. Yes sir.

Q. What did you pay the Bank of Topeka?

A. I paid the Bank of Topeka a note of twenty five hundred dollars and I paid the Bank of Topeka thirty five hundred dollars on a—twenty five hundred dollars on a four thousand dollar note, Mr. Byers paid the other fifteen hundred dollars which has already been mentioned.

The Court: Gone over that before?

A. No, these are additional payments that have not been mentioned.

Mr. Robertson: There is no time being fixed by counsel, it might be any time in ten years.

1014 A. It was in December.

Mr. Hite:

Q. It was in December?

A. Yes sir.

Q. So that is over and above these items you have given the jury thus far?

A. Yes sir.

Q. You said in cross examination you had paid Stein-Bloch twenty five hundred dollars, when was that paid?

A. In November.

Q. You said something about paying somebody one thousand dollars in New York, and another person twelve hundred dollars, and another person five hundred dollars?

A. Yes.

Q. Now Mr. Badders state whether or not there were other payments made in November of the company's accounts to wholesalers?

A. Yes there were other payments made I can't recall them without reference to the books.

Q. You were asked whether at an examination before Judge Slonecker you testified the capital stock of the clothing company was thirty five thousand dollars?

A. Yes sir.

Q. Have you any explanation to offer about that?

A. That the capital stock was thirty five thousand dollars?

A. Yes, did you so testify?

A. I presume I did, if it appears in the record.

Q. Well what was the capital stock at that time?

A. Well the capital stock was sixty thousand dollars, the paid in capital stock in cash was thirty five thousand dollars; that may have been what I understood the question to be.

Q. Now in reference to these charge slips; did you make a charge slip?

A. This twenty five thousand dollars over the thirty five was paid by note at that time.

Q. That never had been paid up in cash?

1015 A. Not in cash. not the twenty five thousand, no sir.

Q. Now with reference to these charge slips about which you were inquired of, as to their being entered on this ledger? What was the purpose of making up those charge slips to put on the ledger?

A. You mean that have been referred to?

A. Mr. Robertson called your attention to charge slips for dividend, charge slips for salary?

A. These were the charges spoken of at the May meeting and were put on the books to see if the condition of the company would stand for those things at the close of the year.

Q. Did you ever make a claim of anybody founded upon those charges?

A. No sir.

Q. Did you ever show them to anybody for the purpose of obtaining anything at all?

A. No sir.

Q. Now Mr. Badders these charges that are mentioned here as dividends and commissions and extra sales, have they ever been paid to you?

A. No sir.

Q. Mr. Badders please examine this paper which I now hand you and state if that is Mr. Graham's handwriting?

A. Yes sir.

Q. That signature is his, is it?

A. Yes sir.

(Paper referred to is marked Exhibit No. 108.)

This is Mr. Graham's resignation as secretary, Your Honor, and we offer it in evidence.

(Reading Exhibit No. 108 to the Jury)

(A copy of Exhibit No. 108 is attached hereto and made a part hereof.)

Q. Now Mr. Badders your attention was called to a letter that you wrote to Mr. Al Decker in January, I think January 17th, in which appears a statement that you had seen a letter written by Mr.

Graham; is this the letter, Exhibit No. 51 referred to in that  
1016 letter?

A. No sir, I never saw that letter before until I came here.

Q. I understood you to say that Mr. Graham told you about that letter, and that some other letter was written by Mr. Graham?

A. Yes sir I drafted a letter for Mr. Graham that I thought I would like to have him send and he said he would.

Q. Is the draft of a letter of which you now speak the letter to which you refer in your letter of January 17th?

A. Yes sir and I think he afterwards sent me a copy of it.

Q. Do you know where that copy is?

A. No I don't.

Q. Now Mr. Badders, you were inquired of with reference to refusing to testify before a referee in bankruptcy; please state whether or not you have contested the bankruptcy proceeding against you from the outset?

A. Yes sir, and I am still contesting it, the company is solvent.

Q. With reference to that particular matter, state Mr. Badders if it is not a fact an appeal was taken to the Circuit Court of Appeals from that very matter?

A. Yes sir and it is now pending.

Q. Now Mr. Badders with reference to these appearances that you made in court up there; please state if it is not a fact that these matters that were referred to by counsel were taken up by you in the absence of your counsel, Mr. Hite, in this city?

A. Yes sir.

Q. Last January?

A. Yes sir.

Q. You have never been in the active practice of the law at all have you?

A. No sir.

Q. Do you consider yourself learned in the law at all?

A. No sir. I copied those affidavits from similar ones McClintock had served on me.

Q. What was that?

A. I say I copied those affidavits that I used from similar ones that Quant had served on me.

1017 Q. Did you give them any fee for that?

A. No.

Q. Now Mr. Badders I understand you say that with reference to these various items in your ledger, particularly the ones inquired about, collections and sales, that there were some original sources of information about that matter; where are those original sources of information; tell me, in what do they consist?

A. They are in the form of sale slips.

Q. Those sales slips were little pieces of paper?

A. Yes sir.

Q. And they were put on an adding machine and added up.

A. Yes we added them every day.

Q. And those adding machine slips were preserved with the sale slips?

A. Yes.

Q. And they would show the exact amount of the sale?

A. Yes.

Q. Now Mr. Badders state what was the general ratio of expense to sales, stating one year with another, would it be five, ten, fifteen, twenty five, or what per cent?

A. Well our expenses were about twenty seven or twenty eight per cent.

Q. When you say that you mean it cost you twenty seven cents out of every dollar of sales.

A. Yes sir.

Q. Now when the sales are spoken of here, does that mean the

gross amount of the cash sale, or the sale after taking off this twenty seven *cents* on the dollar? ,

A. That is the gross amount.

Q. The gross amount?

A. Yes.

Q. Now what do you say Mr. Badders with reference to the question asked you as to the amount of sales in November, December, and January amounting to fifty five thousand dollars, would that mean fifty five thousand dollars net money in cash?

1018 A. No sir, that is the gross sale.

Q. That is the gross sale?

A. Without the expenses out.

Q. Now Mr. Badders have you any idea at all as to the various items that go to make up these gross sums that your attention has been called to in the expense accounts, salary accounts and commission and dividend accounts, and the other accounts, that Mr. Robertson called your attention to?

A. I know nothing of that personally, I can't without looking up the original entries verify the items in the ledger.

Q. Have you any personal knowledge at all of when and how any of these packing cases were shipped from St. Joe to Kansas City?

A. No sir I do not know.

Q. What if anything was said between you and Mr. Stern with reference to shipping those goods from St. Joe to Kansas City before he left Topeka now?

A. He said he would take care of them.

Q. Was there anything said between you and him at that time as to why they would be sent from St. Joe to Kansas City?

A. As to why they would be?

Q. Yes?

A. He said he thought they would have a better sale for the stuff in Kansas City perhaps.

Q. Was anything said with reference to Mr. Stern, at the time they were shipped, would look after a sale of those things?

A. Yes he said that he would take care of them.

Q. Mr. Badders you were asked about your absence from the trial of the bankruptcy case; is it not a fact that your absence was due entirely to trying to be present at the taking of depositions?

A. Yes sir, about seven different places.

Q. State Mr. Badders if it is not a fact that your counsel, D. R. Hite, was taken sick that week?

A. Yes sir.

Q. Now you spoke of notices being served on you or your counsel to take testimony; how long was it after that case was set for trial before it was tried?

1019 A. The Bankruptcy case?

Q. Yes sir?

A. Why I don't recall the date.

Q. But refreshing your recollection I will ask you to state if the order setting the case for trial was not made on the 21st or 22d of February, for the trial of the case on the second of March?

A. I don't know the exact date, it was a very short time, about ten days as I recall it.

Q. These notices to take this testimony you speak of were served during the week immediately preceding the trial, isn't that a fact.

A. Yes sir.

Q. Now you say these notices required you or counsel to be where?

A. St. Louis, Kansas City, Chicago, Syracuse, New York City.

Q. All in one week?

A. Yes sir.

Q. Mr. Badders you were inquired of with reference to Mr. Milton and Mr. Quant and Mr. McClintock, and what they were doing there; now please state if you were pursued at your home in any manner?

A. Yes sir, I was.

Q. And state to the jury how?

A. Well they were constantly calling my home and coming out there with all kinds of applications and affidavits and they practically ruined my home life there.

Mr. Robertson: What has that to do with it your Honor?

The Court: They went out to the house.

Mr. Robertson: Your Honor, I object to that line of testimony.

Q. Was it during that time your wife was very sick?

A. Yes.

The Court: He has said that; no more about the wife being sick because we know the date when she was sick.

Mr. Hite: I have not the date of these visits out there your Honor.

1020 Recross-examination.

Questions by Mr. Robertson:

Q. You went to each place, did you, where these depositions were to be taken?

A. I don't think I stopped at Syracuse.

Q. How many depositions as a result of those notices were actually taken?

A. Why I cannot say as to that.

Q. You know there weren't any, don't you?

A. Well I know there was.

Q. As a result of those notices?

A. Yes. What I know Mr. Robertson is from reading the record, I know nothing of my personal knowledge.

The Court: The question is, were you present at any time when a deposition was taken?

A. No sir.

Mr. Robertson: Were you?

A. No sir.

The Court: That ends it.

Q. Whatever depositions were taken were used on the trial, weren't they?

A. I don't know as to that.

Q. Got there in ample time for the trial?

A. I understood they did not get there in time.

Q. You didn't get there in time for it, did you?

A. No sir.

Q. This Exhibit No. 107, I have not read it yet, Your Honor. Counsel took it to object to it.

Mr. Hite: I took it to examine it, not to object.

Mr. Robertson: I beg your pardon sir, I'm very much surprised.

Mr. Robertson reading Exhibit No. 107.

(A copy of Exhibit No. 107 is attached hereto and made a part hereof.)

A. Your Honor, there has been a reference to some books taken to Mr. Hite's office.

The Court: Your counsel may ask you, if he desires, in 1021 regard to that.

Mr. Hite: I neglected to ask him.

Q. State Mr. Badders what they were?

A. They were the books of account and were not taken to your office but to Mulvane & Gault's which adjoins yours; they were the books of account that were assigned to the Bank of Topeka.

Mr. Robertson: Two arm loads of those?

A. Yes sir, I don't know whether two arm loads.

Q. Any doubt in your mind about Mr. Hite's being the office where Mulvane's & Gault's office is?

A. No sir, I just said adjoining.

Q. All one office with separate rooms?

A. Yes adjoining.

Q. And they and Mr. Hite are in a manner associated together in business?

A. I don't know just what their associations are.

The Court: Stand aside.

(Witness excused.)

The Court: Be any further testimony.

Mr. Hite: That will be the defendant's case, Your Honor. And before going into the Government's rebuttal, I presume there will be rebuttal—

Mr. Robertson: What is it?

Mr. Hite: I say that is the defendant's case.

The Court: Be any rebuttal.

Mr. Robertson: Yes, be a little rebuttal, Your Honor.

The Court: Proceed with your rebuttal.

Defendant rests.

1022 Thereupon, the plaintiff produced and offered, in rebuttal, testimony as follows:

J. L. ADLER, called as a witness on behalf of the plaintiff, in rebuttal, having been first duly sworn, testifies as follows:

Direct examination:

The Court: Please confine your inquiry particularly to the rebuttal testimony.

Mr. Robertson: I shall endeavor to do so.

Questions by Mr. Robertson:

Q. You and Mr. Stern were both present there in the Badders store on the 24th day of December, 1913, when you settled up?

A. Yes sir.

Q. And did you both leave Topeka, together?

A. Yes sir.

Q. When did you go?

A. About eight thirty that evening, as near as I can remember on the Santa Fe.

Q. Where did you go?

A. We went to Chicago.

Q. And where from there did you go?

A. We separated there, Mr. Stern went to Dayton, Ohio, and I went to Laporte, Indiana.

Q. Where is Mr. Stern now?

A. I am unable to say definitely whether in Syracuse, New York or out on the road somewhere.

Q. I will ask you whether he has lately been at Wilkes-Barre, Penn.?

A. He was in Wilkes-Barre or Scranton, I think it was in Wilkes-Barre though I am not positive.

Q. He is still in that same business with you?

A. Yes sir.

Q. You and Mr. Stern stopped at the same hotel in Topeka?

A. Yes.

Q. You are intimate with your business?

1023 A. Yes sir.

Q. And you are very intimate friends, aren't you?

A. Yes sir.

Q. Did he ever talk to you anything about shipping goods for Badders of the Badders Company?

Mr. Harkless: Objected to as incompetent and hearsay.

The Court: No conversation between these two without the defendant there.

Mr. Robertson:

Q. Was that subject ever discussed with you in any way by Mr. Badders?



The Court: He says was it discussed in the presence of Mr. Badders?

Mr. Robertson:

Q. Or with Mr. Badders?

A. No sir.

Q. Have you had a conversation with Mr. Badders lately at the Hotel Baltimore about Mr. Stern?

A. Yes sir.

Q. When was that?

A. I can't place the time positively, I think it was a week ago today.

Mr. Harkless: Objected to as not rebuttal.

The Court: I don't think it is rebuttal.

Mr. Robertson: Mr. Badders was inquired of concerning that question.

The Court: I don't think he was asked particularly about a conversation he had there. Something was said about the defendant, about his inquiring of this man where Stern was.

Mr. Robertson: And I ask him, Your Honor, I ask him if this man didn't give him Mr. Stern's address.

Mr. Harkless: Well, he didn't deny that proposition.

The Court: Answer the question.

Mr. Robertson:

Q. Did you have a conversation with him?

A. Yes sir.

Q. Tell what it was?

1024 A. He asked me where Mr. Stern was, to give him his address; and I gave his address as Wilkes-Barre, Penn., named the firm I thought he would be able to find him at, where I thought he would be able to find him.

Q. When if at all did you tell me that?

A. This afternoon.

Cross-examination.

Questions by Mr. Harkless:

Q. I thought you stated a while ago you didn't know where he was?

A. I stated I didn't know positively whether he was at Wilkes-Barre or Scranton.

Q. Or Syracuse?

A. Yes.

Q. Or out on the road?

A. Yes.

Q. Or you gave him the address as Wilkes-Barre. That is all.

The Court:

Q. And you gave him the name of the house where he might communicate and find out where he was?

A. Yes sir, I did.

(Witness excused.)

RICHARD L. THOMAS, called as a witness on behalf of the plaintiff, in rebuttal, having been first duly sworn, testifies as follows:

Direct examination.

Questions by Mr. Robertson:

Q. What is your name?

A. Richard L. Thomas.

Q. Where do you live?

A. Topeka.

Q. How long have you lived in Topeka?

A. Forty five years.

Q. What is your business?

A. I am receiver and trustee in bankruptcy in Judge Pollock's court.

Q. Trustee in bankruptcy and receiver; what official positions have you heretofore held?

A. I have been clerk of the District Court of Shawnee County.

Q. Are you acquainted with George S. Badders?

A. Yes.

Q. Did you have to do with the Badders Company under the directions of Mr. Clark as receiver?

A. Yes, I was associated with Mr. Clark.

Q. And often around the place of business of the Badders Clothing Company?

A. Yes.

The Court: Suppose you direct his attention to what you desire to rebut.

Mr. Robertson:

Q. I will ask you whether you ever refused any request of Mr. Badders to see any of the books or papers of the Badders Clothing Company?

Mr. Harkless: Object to that for the reason it is not rebuttal; the witness has already been on the stand and denied that proposition.

Mr. Robertson: No, I think not.

Mr. Harkless: He has positively.

The Court: That is your assertion; let's ask him. Have you been on the stand before?

A. I have not.

The Court: This witness says he has never been on the stand before, therefore somebody is mistaken; go on and ask your questions Mr. District Attorney.

Mr. Robertson: Will you read the question?

Question read.

A. I never did.

Q. Did you ever have a conversation with him on that subject?

A. Yes.

Q. Tell what that was and when and where it was?

A. Well it is not strictly the books and documents of the company that I refused, that this matter to which you refer consisted.

1026 Q. Just tell what happened and just what was said?

A. The only time I refused Mr. Badders anything was on one occasion he came in and requested to go into the vault and he took up a set of what he stated was plans of his house and asked permission to take them out; I said I could see no objection to that; but at the moment he was about to take them out Mr. Clark came in and I casually suggested to him that Mr. Badders wished to take out a set of plans, his personal property, so he stated, and he said that he couldn't permit anything of that sort. There never was, on any occasion that I didn't accord him——

Q. Did he ever make any request of you of any sort to look at the books and papers or records of anything of the Badders Company that you had to do with, at which time you refused him access to them?

A. Positively no.

Q. No such thing ever happened?

A. No sir.

#### Cross-examination.

#### Questions by Mr. Harkless:

Q. Mr. Thomas, I understand then, that you did state to him that you wouldn't let him have his private property?

The Court: That is not exactly what he said; he said he saw no objection to removing these plans of the house.

Mr. Harkless: But that Mr. Clark refused to let him do that?

A. Yes.

Q. Did you understand that was a refusal to let him have anything else, if he wouldn't let him have his private property?

A. It was the understanding that he couldn't take any of the books and papers of the company out.

Q. It was thoroughly understood you wouldn't let him do that, wasn't it?

A. Yes.

(Witness excused.)

1027 F. P. METZGER, called as a witness on behalf of the plaintiff, in rebuttal having been first duly sworn, testifies as follows:

Direct examination.

Questions by Mr. Robertson:

Q. What is your name?

A. F. P. Metzger.

Q. Where do you live Mr. Metzger.

A. Topeka.

Q. What is your business?

A. Insurance.

Q. What business were you in in 1911?

A. In the banking business.

Q. With what bank were you connected?

A. German American.

Q. Did you then know George S. Badders?

A. I did.

Q. Did you have a conversation with defendant Badders one day previous to his going into the Marshall Clothing Company, along there about where that company is situated?

A. I did.

Q. Just tell the jury what that was?

A. Well, the conversation related to the prospective purchase of the store by Mr. Badders, and I suggested that it might be a bad business deal as he didn't know anything about the clothing business; and he then showed me how Auerbach had made a great deal of money, had automobiles and a palace, and went away to Europe, and one thing and another, and he apprehended he could do the same thing.

Q. What else, if anything did he say?

A. Why he said he was going to buy it.

Q. What if anything did he say then in reference to the Marshall Clothing Company store?

A. In reference to the Marshall Clothing Company store, why he said he was going to buy it.

Q. What if anything did he say about getting rich?

A. Why he said he could get rich from that store.

Q. What if anything further do you recall?

1028 A. Now he said, "If Auerbach could do it he could do it", that is what he said, if Auerbach could do it he could do it.

Q. I will ask you whether or not he used this expression, in substance, "If I can buy that thing I can get rich in a darned short time and I am going to do it," or words to that effect?

A. I wouldn't be perfectly positive about that "short time"; I am not sure about that.

Q. You are sure about the getting rich business, are you?

A. Yes sir.

## Cross-examination.

Questions by Mr. Harkless:

Q. Do you know Mr. Quant and Mr. McClintock, attorneys for the bankruptcy people?

A. Yes.

Q. Who was it come to see you to get you to come down here as a witness?

A. Mr. Quant.

Q. Mr. Quant: That is all.

(Witness excused.)

W. S. MCCLINTOCK, called as a witness on behalf of the plaintiff, in rebuttal, having been first duly sworn, testifies as follows:

## Direct examination.

Questions by Mr. Robertson:

Q. You are Mr. W. S. McClintock?

A. That is my name.

Q. Where do you live Mr. McClintock?

A. Topeka.

Q. How long have you lived there?

A. Twenty years or more.

Q. What is your business?

A. I am a lawyer.

Q. What line of law business do you have?

A. General practice.

Q. Acquainted with the defendant Badders?

A. I am.

1029 Q. Did you ever have a conversation with him regarding his increased capital stock of twenty five thousand dollars?

A. I did.

Q. When and where?

A. At my office about the 28th day of November, 1913.

Q. State what the conversation was?

Mr. Harkless: I don't know of anything this is rebuttal to.

The Court: I think it is; the witness there was asked whether he had any conversation with this man.

Mr. Harkless: Not at this time and place.

The Court: I know what the question was, as to whether he had a conversation as to whether he knew who owned this twenty five thousand dollars of stock.

Mr. Harkless: Except.

A. Mr. Badders stated to me at that time in answer to my inquiry, that the twenty five thousand dollars of capital stock had been subscribed by three persons, one, a non-resident of the city who was coming to Topeka to engage in business; the other one a person who lived in Topeka, and the balance by himself; he said the non-resi-

dent who was coming to Topeka was to take, I think he said, twelve thousand dollars.

Mr. Harkless: Wait a moment that was not the question asked him at all; there was nothing gone into about what he was to take.

The Court: The defendant was asked on the stand whether he had not stated that that stock of twenty five thousand dollars was divided up and owned by three persons; he said there was no such conversation.

Mr. Harkless: That part he has already testified to; but he was not asked in reference to the questions this gentleman is going into; we will have to put the witness back on the stand if — go into this new matter.

The Court: I don't care if you put him back twenty five times; he will go back if it is proper.

Overruled.

Mr. Harkless: Except.

A. That the ten thousand dollars was to be taken by some one residing in Topeka and three thousand was to be taken by himself, George Badders.

1030 Q. What if anything did he say to you about the names of these parties?

A. He said he was unwilling at that time to disclose their names, but at some later time he would let me know what their names were.

Q. Mr. McClintock have you ever had the slightest desire or inclination to in any manner injure George S. Badders or his business?

The Court: I don't think that is rebuttal.

Mr. Robertson: That is what they are holding out.

The Court: I don't care what they are holding out, I am only taking testimony in rebuttal; you can take care of the holdout; the testimony must be confined to rebuttal in this case strictly.

Mr. Robertson:

Q. Did you ever have a conversation with Mr. Badders in which you sought to get him to make a single payment of some sort on a claim?

A. Yes.

Q. What was that?

A. Many of them.

Q. But I want to ask you this; did you ever go to him with this idea, and say to him, that I want to just get you to make a payment here so I can get an act of bankruptcy to prove on you, or words to that effect?

The Court: I don't think that was stated by him.

Mr. Robertson:

Q. Did you ever go there with that purpose?

A. No, I went there with the purpose of getting payments on

accounts that were in our office against his firm; I endeavored to do that many times.

Q. Did you ever direct any of the people in your office to do anything of that sort?

A. With relation to getting an act of bankruptcy?

A. Yes sir?

A. No sir, nothing of that kind was ever done in our office.

Cross-examination.

1031 Questions by Mr. Harkless:

Q. Mr. McClintock, if I understood you correctly, you just stated to the jury a while ago that he told you this stock was originally subscribed by three parties; did you state that a while ago to this jury? That he told you that?

A. I don't think I used the word "originally".

Q. No, I don't think you did. Did you mean to convey to the jury the impression that he had told you this stock had been subscribed in that articles of incorporation by anybody besides himself?

A. Yes, that was the impression he conveyed to me.

Q. But he didn't say so, did he? In the original articles of incorporation?

A. I can't remember the exact words.

Q. Did you tell that jury a while ago——

The Court: They will know what he told them on the stand; you can ask what he did say?

Mr. Harkless:

Q. I am asking it now, did you say that?

A. I don't think I used the word originally.

Q. And you don't mean to say that he told you that, do you?

A. That was the impression I received from what he told me.

Q. That was the impression that you received from what he told you, but you don't mean to say that he said that, do you?

A. I think he did; he conveyed the impression to me that the three stockholders who were taking that increase of capital stock were three persons, including himself as one, taking three thousand dollars——

Q. Original subscription?

A. Certainly.

Q. Didn't you know right then that the articles of incorporation on file with the secretary of state showed he had subscribed it all himself?

A. No, I don't think I knew that.

Q. You afterwards learned it?

A. I learned it upon inquiry.

Q. Didn't you see Bradstreet and Dunn's reports?

1032 A. No.

Q. Did you see them afterwards?

A. Many times I think afterwards.

Q. Did you see Bradstreet's reports made out to the effect that this was subscribed by Badders?

A. I had not.

Q. No. Now you say that he told you that he was making some arrangements by which some one party was going to take ten thousand dollars of this stock?

A. No, he did not say that, nor did I.

Q. What was it he said?

A. He said, in substance, that the increased capital stock of twenty five thousand dollars was being taken by three parties.

Q. Was being taken?

A. One of twelve thousand dollars, another of ten thousand dollars, and that he himself was taking the remainder of three thousand dollars.

Q. Now Mr. McClintock you just stated to the jury that he stated it was being taken; do you mean the jury to understand from that statement that he said it had already been taken?

A. I couldn't say that I mean them to understand anything except what actually occurred; I am speaking to the best of my recollection as to what he said.

Q. Now, Mr. McClintock, isn't it a matter of fact that you and Mr. Quant were trying there for nearly a week to get Mr. Badders to make some particular payment upon any one claim in order to have an opportunity to present the proceedings in bankruptcy?

A. That is absolutely not true, sir.

Q. Well, didn't you hunt all around the country to find three men who would file a petition?

A. No, I didn't hunt anywhere for anybody to file a petition in bankruptcy, but on the contrary I advised against it.

Q. You advised against it?

A. Yes.

Q. You thought it ought not to be done?

1033 A. I did.

Q. And when you did you hunted a little claim of eighty dollars to put in there for a claim?

A. I didn't hunt up anything; I learned what I could.

Q. You went to the Electric Light Company to find out if he hadn't paid a current bill for electric light?

A. No, I didn't go to the Electric Light Company.

Q. Did you get permission to do that?

A. To do what?

Q. Didn't you ask the electric light company, go and inquire of them as to whether or not they hadn't made that payment?

A. No.

Q. How did you find it out?

A. I don't know how I found it out.

The Court: Did you file a petition in bankruptcy?

A. Our firm filed the petition in bankruptcy.

Mr. Harkless:

Q. Are you attorney for this National Association of Credit Men at Topeka?



A. No.

Q. Have you ever acted for them?

A. No.

Mr. Robertson: Objected to as not cross examination.

Mr. Harkless: I think that is true.

Redirect examination.

Questions by Mr. Robertson:

Q. When you advised against bankruptcy did you know about these dividends, and commissions, and this and that——

Mr. Harkless: Object to that as not proper rebuttal.

The Court: I don't know why you sought to get out the fact that he advised against it, and then object when the question is asked as to whether he knew certain things.

Mr. Harkless: He voluntarily made that statement, I didn't ask him at all.

The Court: That is all there is to it; it was a voluntary statement.

(Witness excused.)

1034 J. G. SLONECKER, called as a witness on behalf of the plaintiff, in rebuttal, having been first duly sworn, testifies, as follows:

Direct examination.

Questions by Mr. Robertson:

Q. What is your name?

A. J. G. Slonecker.

Q. You familiar, Judge, with what is known as the Badders Clothing Company, Bankrupt, case?

A. Parts of it.

Q. Were you upon one occasion a Special Master in that case, appointed by this court?

A. Yes sir.

Q. And did you, as such Special Master, take certain testimony upon January 23, 1914, in Topeka?

A. I did.

Q. And was Mr. Badders present upon that occasion?

A. He was.

Q. I call your attention to a book here marked Exhibit No. 109, and to what appears to be pages 1, 2, and an unnumbered succeeding page, under the Title, In the Court of Bankruptcy for the District of Kansas, In re Badders Clothing Company, Bankrupt, in Bankruptcy, testimony before J. G. Slonecker, Special Master, at his office in Shawnee County, Kansas——

The Court: What is the use of reading that into the record? You asked this defendant when he was on the stand if he didn't make certain statements.

Mr. Robertson: It is necessary because of the lack of paging, Your Honor.

Q. I will ask you whether the testimony upon those pages was given before you by Mr. Badders?

A. Yes, it was.

The Court: Now Mr. District Attorney, didn't you call defendant's attention to those, and didn't he say he testified in that way?

1035 Mr. Robertson: He didn't admit this testimony about the capital stock.

Mr. Harkless: Yes he did; he said if it was written there it was correct, and you say it is.

The Court: He said he supposed what was in the record was a correct statement of his testimony before the Master at that time.

Mr. Robertson: As long as counsel admits that is correct. —

The Court: That is the court's understanding of the case as presented. You asked him about those things and he said he believed they were correct, and that was about all that was said, and the record is in because you read from it.

(Witness excused.)

Mr. MILTON, called as a witness on behalf of the plaintiff, in rebuttal, having been first duly sworn, testifies, as follows:

Direct examination.

Questions by Mr. Robertson:

Q. Mr. Milton, you live at Topeka?

A. Yes sir.

Q. What is your business?

A. I am an attorney.

Q. How long have you been a lawyer?

A. About three years.

Q. You know Mr. Badders?

A. I do.

Q. You — at his store upon one occasion in December, 1913, in which you had a conversation with him, wherein he made some statement to you about taking his keys, or something of that sort?

A. I was.

Q. Just tell the jury what that conversation was?

A. He took his keys out of his pocket——

Mr. Harkless: The question should be put to this witness that was put to the other witness.

1036 The Court: The question was put by the District Attorney to the defendant as to whether he didn't state to this witness such and such things; now you may ask him whether he didn't state those things.

Mr. Robertson: I can do that. I thought I would let him tell the conversation.

The Court: Confine it to the question Mr. District Attorney. Mr. Robertson: I will.

Q. When was that?

A. That was about the latter part of December, I don't recall the exact date, 1913.

Q. And who were present?

A. George Badders and myself.

Q. Did Mr. Badders upon that occasion pull a bunch of keys out of his pocket, and referring to these keys or the store, and swinging these keys in his hand and say to you, this, in substance, "I was hoping that you fellows would attempt to take these away from me and then I would have enough to retire on, or a competence."

A. He did in substance say that.

Cross-examination.

Questions by Mr. Harkless:

Q. Well you had tried to take everything else, hadn't you?

The Court: That is not a proper question, and counsel ought to know it is not a proper question to be asked of this witness; he asked him the question as to whether that conversation occurred, in direct rebuttal to the testimony that the defendant gave.

Mr. Harkless:

Q. I want to ask you now, you stated that you were there on one occasion, in answer to his question?

A. Yes.

Q. You were there a half a dozen or a dozen times, weren't you?

A. Yes sir.

Q. And weren't you there, and other parties, following him  
1037 around the store, and out to his house also?

A. No sir, I don't know where Mr. Badders lives.

Q. Are you one of the gentlemen in this bankrupt firm's office, McClintock & Quant?

A. I am with the firm of McClintock and Quant, yes.

Q. You are with that firm?

The Court: Do you mean the firm is bankrupt, or mean they are lawyers?

Mr. Harkless: I mean the firm is bankrupt.

The Court: Stand aside sir.

(Witness excused.)

Mr. Robertson: Government rests.

The Court: Gentlemen of the jury, the evidence in this case is all in. The arguments of counsel will be made here tomorrow forenoon. You will hear all of this case, as I told you before, hear the arguments of counsel, hear all they have to say, then hear the instructions of the court, then you will begin to discuss in your jury room the case among yourselves. And the purpose now is to have this case go to you by recess tomorrow. I don't know that I have

anything else. There was some discussion about whether or not it might not be discussed tonight, partly discussed. If there was no one's convenience to be consulted except the lawyers, I might require the thing to go on; but I have got to consult your convenience, and got to consult your comfort; and in the condition that these streets are in now, I hesitate to bring out, in the night time, the members of this jury; and so, if you can get down without falling, securely to your quarters, I am going to leave you there until tomorrow morning, and I will try to be here at nine o'clock when this argument will begin, and you may adjourn the court until two o'clock tomorrow morning.

(9:00 O'CLOCK A. M., SATURDAY, January 30th, 1915.)

1038 Mr. Hite: Your Honor, defendant has on file a motion for directed verdicts.

The Court: Let me see it please. The motion is overruled.

Mr. Hite: Note an exception.

The Court: Proceed with the argument in the case. Counsel will understand the time allotted will be divided among the — as they see proper and the court will not interfere but only keep the time that is allotted.

Thereupon, Mr. Robertson, of counsel for the plaintiff, argued the case to the jury on behalf of the plaintiff.

Thereupon, Mr. Harkless, of counsel for the defendant, argued the case to the jury on behalf of the defendant.

Thereupon, Mr. Hite, of counsel for the defendant, argued the case to the jury on behalf of the defendant.

Thereupon, Mr. McKeever, of counsel for the defendant, argued the case to the jury on behalf of the defendant.

Thereupon, Mr. Brady, of counsel for the plaintiff, argued the case to the jury on behalf of the plaintiff.

Thereupon the defendant prayed the court to charge the jury as follows.

1039 In the District Court of the United States for the District of Kansas, First Division.

UNITED STATES OF AMERICA, Plaintiff,

v.

GEORGE S. BADDERS, Defendant.

Comes now the defendant, and respectfully prays the court on behalf of the defendant to charge the jury in the above entitled cause as follows:

# I.

The court charges and instructs the jury that the defendant in this case is not on trial for the failure, neglect, or refusal to pay any of his debts, nor for having given checks of any kind or character upon banks, or to creditors, that have not been paid; nor for any

breach of promise or inability to pay debts at any time; nor upon any charge of failing to pay up any capital stock that he may have subscribed to the Badders Clothing Company; nor upon any charge of selling any of his property or goods at any price, or for any purpose, and that as far as this case is concerned those questions are wholly immaterial except in so far and only as such matters may bear, or have a bearing upon the charge in the indictment that the defendant had devised a scheme and artifice to defraud his creditors at the time charged in the indictment; and that the inquiry into these matters become necessary only as bearing solely and only upon such intent, and are not to be considered or weighed by the jury for any other purpose, which request the court denied and defendant duly excepted.

## II.

Defendant also requested the Court to charge as follows:

1040 In reference to the \$25,000 note offered in evidence, the Court instructs and charges the jury that if said note was given by George S. Badders to the Badders Clothing Company in payment of an increase in the capital stock of said corporation to the extent of \$25,000, and you believe from the evidence that said note was given in good faith by the defendant Badders for that purpose, and that said Badders at the time he executed said note was solvent, and said note a marketable asset, then you are instructed that said increased capital stock was paid up and constituted a capital asset of said corporation and was a sufficient payment to its capital stock so increased, which request the court denied and defendant duly excepted.

## III.

Defendant also requested the Court to charge as follows:

The Court charges and instructs the jury that if they find from the evidence that the money taken by the defendant Badders from the sale and disposition of his stock of goods, was by said Badders paid out, or caused to be paid out to his creditors, or in payment of other bona fide indebtedness and expenditures in good faith, and with the intent on the part of said Badders to apply the same in good faith to the liquidation of his debts and bona fide expenses incurred, then you are instructed that no presumption can arise therefrom, or because of such acts and conduct of the defendant, that he intended to, or had devised a scheme or artifice to defraud, as charged in the indictment, and if he did so pay out the same in good faith, then you may take such facts into consideration also in passing upon the question as to whether he intended at the times charged in the indictment, to devise a scheme or artifice to defraud his creditors as therein charged, which request the court denied, and defendant duly excepted.

1041

## IV.

Defendant also requested the Court to charge as follows:

The Court instructs and charges the jury that even though they

may find that the defendant may have taken a number of boxes of goods from the store in the month of December and shipped the same out of the city of Topeka and stored the same elsewhere, and that all of said goods were returned afterwards to the store and replaced therein, and constituted a part of the stock turned over to the receiver, then you are instructed that so far as the creditors are concerned the defendant had the right to do so and that the same constituted no offense in itself, and that the defendant cannot be found guilty of any crime or offense in said transaction of itself, and that such intent was competent in the case only and solely as bearing upon the question as to whether the defendant intended to, and devised a scheme or artifice to defraud his creditors as and at the time charged in the indictment, and in passing upon this question the jury may take into consideration the evidence tending to show that the defendant did so return the goods, and that he charged the value thereof to his own personal account upon the books of the corporation at the time they were taken out, which request the court denied and defendant duly excepted.

## V.

Defendant also requested the Court to charge as follows:

The Court charges and instructs the jury that it was no crime or offense so far as this case is concerned, as to whether the corporation itself, or the corporation at the instance of the defendant, declared the dividend shown in the evidence, or that the defendant was instrumental in causing the dividend to be declared; nor as to how or in what manner it was declared, but that such facts become material only and solely in passing upon the question as to whether

the defendant had devised a scheme and artifice to defraud his creditors at the time as charged in the indictment which request the court denied and defendant duly excepted.

## VI.

Defendant also requested the Court to charge as follows:

The Court charges and instructs the jury that there is no evidence in this case from which the jury are justified in finding that any dividend was ever paid or received by the defendant Badders, or that any commissions upon the sale of capital stock, or upon the sale of merchandise in excess of \$50,000 was ever paid to or received by the defendant, which request the Court denied and defendant duly excepted.

## VII.

Defendant also requested the Court to charge as follows:

The Court instructs the jury that any and all evidence in the case, showing or tending to show that a dividend was declared upon the capital stock of the corporation, or commissions were agreed to be paid for the sale of goods or capital stock, or that increased salaries were agreed to be paid by the corporation to its officers, and to the defendant was not to be admitted in evidence

for the purpose of showing, nor is the same to be considered by the jury as any crime or violation of law in this cause, but was admitted solely and only that the same might be considered by the jury as bearing upon the question as to whether the defendant had devised a scheme or artifice to defraud his creditors as and at the time charged in the indictment, and they cannot be considered by the jury for any other purpose, which request the court denied and defendant duly excepted.

### VIII.

Defendant also requested the Court to charge as follows:

The Court instructs and charges the jury that the evidence tending to show that the defendant purchased some municipal bonds, and afterwards disposed of the bonds and received cash,  
1043 either partly in currency or partly in gold, from the Trust Company, constituted no crime or offense against the law on the part of the defendant, and so far as the creditors are concerned or affected this case, he had a right to do so, and that such evidence was admitted solely and only for the consideration of the jury in passing upon the question as to whether the defendant devised a scheme or artifice to defraud his creditors as and at the time charged in the indictment, which request the court denied, and defendant duly excepted.

### IX.

Defendant also requested the Court to charge as follows:

The Court instructs and charges the jury that it is a matter of no importance in this case as to whether the defendant paid some of his creditors and left others unpaid, or as to whether he preferred one or more creditors as against others, and that if such creditors as he did pay were paid in good faith, and for the purpose of discharging their indebtedness, and any and all evidence with reference to the payment of any one or more of the creditors, or the refusal to pay any one or more of the creditors, and all evidence as to the acts or conduct of the defendant in reference to the same were admitted in evidence solely and only for the consideration of the jury as bearing upon the question as to whether the defendant intended to, or devised a scheme or artifice to defraud his creditors, as and at the time charged in the indictment, which request the court denied and defendant duly excepted.

### X.

Defendant also requested the Court to charge as follows:

The court instructs and charges the jury that in passing upon the question in this case as to whether the defendant devised a scheme or artifice for the purpose of defrauding his creditors, as charged in the indictment, the jury are instructed that if from all  
1044 of the evidence in the case it shall appear to them that the acts and conduct of the defendant were as consistent with honesty and good faith as with the purpose and intention to

defraud, as charged in the indictment, then the jury are instructed that the defendant is not guilty, and they should return a verdict in his favor, which request the court denied and defendant duly excepted.

### XI.

Defendant also requested the Court to charge as follows:

The court instructs the jury with reference to the charge that the defendant mailed the letters set out in the indictment, that if they find from the evidence that the same were mailed under pressing circumstances and financial embarrassment confronting him at the time, for the purpose and with the intent to secure extension of time, or additional goods, in good faith, for his sacrifice sale, and with the expectation and intent that he could and would be able to meet his liabilities incurred, and were not mailed with an intent on his part in furtherance of any scheme or artifice to defraud his creditors, or to aid in doing so, then you are instructed that the defendant is not guilty in this case, which request the court denied, and defendant duly excepted.

### XII.

Defendant also requested the Court to charge as follows:

The court charges and instructs the jury that no charge of a scheme or artifice to defraud a creditor can be sustained against the defendant as to any creditor who may have shipped and billed his goods to the corporation prior to the time of the mailing of the letters mentioned in the indictment to such creditor, which request the Court denied and defendant duly excepted.

### XIII.

Defendant also requested the Court to charge as follows:

The Court instructs the jury that if they have a reasonable doubt as to the guilt of the defendant, then they must return a  
1045 verdict for the defendant, and in this connection the jury are instructed that each individual juror must be convinced beyond a reasonable doubt of the guilt of the defendant before they should return a verdict of guilty, which request the court denied and defendant duly excepted.

### XIV.

Defendant also requested the Court to charge as follows:

The Court instructs and charges the jury that on January 22, 1914, the defendant was served with an injunction prohibiting him from disposing of any of the money or property of the Badders Clothing Company, and from the date of the service of that injunction upon the defendant he was prohibited from paying any such debts, and no inference against the defendant can be drawn from the fact that none of the debts of said Clothing Company were paid or attempted to be paid after that time, or that he refused to pay any creditors of the Clothing Company who demanded payment of their



claims, after that date, which request the court denied and defendant duly excepted.

### XV.

Defendant also requested the Court to charge as follows:

The Court instructs the jury that if you find from the evidence that in the months of December 1913 and January 1914, the Badders Clothing Company was in fact insolvent, and was being pressed by its creditors for payment of their claims, then you are instructed that it could not make payment through its president, or otherwise of any one or more of said claims, or allow an attachment to stand without being released, for a period of five days, except at the risk of being adjudged a bankrupt, which request the Court denied and defendant duly excepted.

### XVI.

Defendant also requested the Court to charge as follows:

1046 The Court instructs the jury that if you find from the evidence that the immediate cause of the failure of the defendant to pay, or cause to be paid, the debts of the Badders Clothing Company arising from the purchase of the goods referred to in the indictment was the conditions confronting him at the time demands for payment for such goods were made upon him, and that except for such conditions he would have paid for such goods, then your verdict must be for the defendant, which request the Court denied, and defendant duly excepted.

### XVII.

Defendant also requested the Court to charge as follows:

The Court instructs the jury that the indictment in this action charges the defendant with having devised a scheme or artifice to defraud the several persons, partnerships and corporations named in the indictment, and other persons, to the grand jurors unknown of goods, wares, merchandise and property of value, by means of false and fraudulent pretenses and promises, and you are therefore instructed that evidence tending to show that the defendant converted money of the Badders Clothing Company to his own use does not sustain this charge, which request the Court denied, and defendant duly excepted.

### XVIII.

Defendant also requested the Court to charge as follows:

The Court instructs the jury that the stock of goods in question was the property of the Badders Clothing Company, and not of the creditors, and the Badders Clothing Company had the right to sell the same, or any portion of the same, for any price that they saw fit, or to otherwise dispose of the same as they saw fit, and the creditors have no right to interfere therewith, so far as this case is concerned, and any and all evidence introduced with reference to that subject was admitted solely and only for the purpose of bearing

upon the question as to whether the defendant devised a  
1047 scheme or plan to defraud his creditors as and at the time  
stated in the indictment, which request the Court denied  
and defendant duly excepted.

### XIX.

Defendant also requested the Court to charge as follows:

The Court instructs the jury that as to any sales of merchandise made to Voiland, to Mills, or to August, that the defendant had the right to sell said goods to said parties when he did sell them, and to sell them for such price as he say fit, and that the evidence concerning those matters was admitted only for the purpose, and as bearing upon the question as to whether the defendant devised a plan or artifice to defraud his creditors as and at the time stated in the indictment, and in this connection you are further instructed that if said goods were sold at a reasonable price under the conditions existing at the time, having regard to the character of the goods, then you are instructed that no presumption of improper intent can arise therefrom as against the defendant, which request the court denied, and defendant duly excepted.

### XX.

Defendant also requested the Court to charge as follows:

The Court instructs the jury that if you find from the evidence that the Badders Clothing Company, after the completion of the sale, was in good faith intending to continue in business, and had made arrangements for new quarters, and cutting down the space in their old quarters and ordering fixtures and arranging for the continuance of business, then you are instructed that you must take such facts into consideration in passing upon the question as to whether or not the defendant had any intent to defraud creditors as and at the time charged in the indictment, which request the Court denied and defendant duly excepted.

### XXI.

Defendant also requested the Court to charge as follows:

The Court instructs the jury that any transactions, or  
1048 conduct by the defendant Badders as between himself and  
the Badders Clothing Company, or the handling of its cash  
funds, or goods, in the manner shown by the evidence, is a matter  
of on importance to the Badders Clothing Company, and the ques-  
tion as between the Clothing Company and Badders is not at issue  
in this case, and he cannot be convicted for any transactions had be-  
tween himself and the company, or for any alleged breach of duty  
between himself and the Badders Clothing Company, and any and  
all transactions between himself and the Badders Clothing Company  
were admitted in evidence only and solely as bearing upon the  
question as — whether the defendant intended so defraud the  
creditors at the time, and as charged in the indictment and is to be

considered by them solely and alone as bearing upon that question which request the court denied, and defendant duly excepted.

## XXII.

Defendant also requested the Court to charge as follows:

The Court instructs the jury that it appears in evidence that in 1911 a previous bankrupt sale was conducted by Badders Clothing Company in the same building at Topeka, Kansas. You are instructed, therefore, that if you find at said sale that Badders had informed his creditors thereof, and that the same was freely advertised as a sacrifice sale in the newspapers, and resulted in a sale of goods so that the Badders Clothing Company was unable as a result thereof to pay up all of its debts and continue in business thereafter, and that said sale was conducted in a similar manner to the sacrifice sale in question, made in December, 1913, and that the sale in December, 1913, was put on and conducted under similar circumstances and conditions as to that of 1911, then you may take such facts into consideration in passing upon the question as to whether the defendant had devised any scheme or artifice as and at the time charged in the indictment, to defraud the creditors, as charged in the indictment, which request the Court denied and defendant duly excepted.

## XXIII.

Defendant also requested the Court to charge as follows:

The Court charges and instructs the jury that even though they may find that the defendant did all of the things and performed all of the acts charged in the indictment against him in the manner and form as charged therein, yet you are instructed that said acts and transactions do not of themselves prove that the defendant had the intention to form a scheme or artifice to defraud his creditors as charged in the indictment, and notwithstanding you find all of said facts to be true, yet defendant cannot be convicted unless you find that he had an intent as charged in the indictment to defraud his creditors, and that the doing or performing of all or any of the acts charged in the indictment constituted no crime on the part of the defendant unless the jury further believe that it was the original intent of defendant at the time and in the manner charged in the indictment to defraud his creditors and persons, as therein charged, which request the Court denied and defendant duly excepted.

## XXIV.

Defendant also requested the Court to charge as follows:

The court charges and instructs the jury that in considering the question as to what became of the funds taken in by the company at the sale, they may take into consideration the amount shown from the evidence to have been necessarily expended by the defendant in defending the corporation in the bankruptcy proceeding, as well also as the expenses incident to the sale, and any and all

amounts that the corporation may have paid out to creditors, or paid in liquidation and satisfaction of debts for which the corporation might be liable, which request the court denied and defendant duly excepted.

Which said charges and requests on behalf of defendant  
1050 and each and every one thereof the court refused and denied, to which action of the court, defendant duly excepted and duly excepted to the refusal of the Court to give each separate and respective charge and to the refusal of the court to charge the jury on the whole thereof as requested.

Thereupon the Court charged the jury as follows:

1051

*Charge of the Court.*

Gentlemen of the jury, with most commendable attention, consideration and patience on your part, we have now progressed in the trial of this protracted case to that point at which the law imposes on me the duty and obligation of defining to you the issues of fact involved for your decision and of stating to you those principles of the law of the case by which you must be governed in your deliberations, and in arriving at your verdicts in this case. In so doing, gentlemen, I deem it proper to first advert to a few of the more general principles obtaining and applied in the administration of justice in our courts.

You doubtless already are informed, know and understand on the trial of causes in our courts of justice before the court and a jury, such as in this case, the responsibility for the right and due administration of justice is equally divided between the court and the jury. While this duty or obligation by the laws is so equally imposed, it is not the same kind. That is to say, it is the duty of the court to declare the law of the case and the jury must receive and apply the law to the facts precisely as declared by the court, for if any mistake be made in a matter of law, that mistake is one for which the court alone is and must be held responsible, and for which the jury is not responsible. The jury is responsible only under the respective oaths of its members to receive, adopt and apply the law to the facts of the case precisely as declared by the court. Such is the duty of the court. On the other hand, the jury and the jury alone is the exclusive judge of the weight of the evidence, the credibility of the witnesses and of the facts proven by the evidence received on the trial of the case, and if any mistake be made on the trial of the case in judging matters of fact, such mistake is one for which the jury must be held responsible, for such mistake the court is not responsible. Whenever on any such trial as this in our courts of justice, on the one hand, the court shall intelligently, correctly, fearlessly and positively declare the law with no other thought, no  
other care, and no other purpose in mind than the doing  
1052 of equal and exact justice under the law, to the parties litigant in the cause, and, on the other hand, the jury receives the law as declared by the court, and just as fearlessly, intelligently and cor-

rectly finds the true facts from a consideration of the evidence offered at the trial from the witnesses, and without fear, favor or bias from or for any party litigant, or from any other cause, unite the facts so found with the law as declared in their verdicts, in such case justice is done, and gentlemen, it can be done in no other way or manner. If ever, gentlemen of the jury, the day shall come to this country when our courts through any influence shall fail to honestly, truly and courageously declare the law as it exists in cases tried before them, or juries shall, through any fear, prejudice, bias, favor or sympathy, fail to find the true facts of the case under the law as declared, the lives, the liberty and the property of our citizens will become unsafe and worthless. So much, gentlemen for our respective duties which we will do under our oaths in this present cause.

Coming now more closely to the case in hand, you further understand gentlemen, in our country, under its Constitution, the national government has retained to itself the right, and exercises the monopoly of carrying the mails of the country. In the discharge of this public duty so undertaken and owed to the citizen, Congress has enacted certain laws for the proper, safe and orderly conduct of the business. You further understand, gentlemen, if you pay to the government the price of what is called first class postage you have the right and privilege of having your letter or other communication sealed and so carried that none but the sender and the one to whom it is sent may ever see or know its contents. This right and privilege of the citizen is of the highest importance and goes far in making life, as we understand and live it, endurable. Those who occupy close and intimate relations in life, either as members of the same family, the same society, or engaged in the same business, must, of necessity, have this privacy secured to and enjoyed by them? However, it was by the law making power of the government found this  
1053 privilege so secured and so beneficial to the right-minded citizen was by others abused. Hence there was enacted by the Congress laws declaring certain classes of matter non-mailable, and providing punishment for those who violate such laws. One of such laws is comprised in Sec. 215 of the Federal Penal Code, and in so far as applicable to this case, reads, as follows:

"Whoever, having devised or intending to devise any scheme or artifice to defraud, or for obtaining money or property by means of false or fraudulent pretenses, representations or promises, shall, for the purpose of executing such scheme or artifice or attempting so to do, place, or cause to be placed any letter, postal card, package, writing, circular, pamphlet or advertisement whether addressed to any person residing within or outside the United States in any postoffice, or station thereof, or street or other letter box of the United States, or authorized depository for mail matter, to be sent or delivered by the postoffice establishment of the United States, or shall take or receive any such therefrom, whether mailed within or without the United States, or shall knowingly cause to be delivered by mail according to the direction thereon, or at the place at which it is directed to be delivered by the person to whom it is addressed, any such letter,

postal card, package, writing, circular, pamphlet, or advertisement" is deemed guilty of violating this law.

The defendant now on trial George S. Badders, was presented to a Grand Jury of this District and an indictment containing in all twelve counts or charges was returned against him. Each of the twelve counts or charges are based upon and charge the defendant with the violation of Section 215 of the Penal Code of which I have just read the material parts. And now, gentlemen, I desire in as concise a manner as I may to state to you the nature of the twelve charges made by the Government against the defendant.

It is charged in each of the counts of the indictment that on or about the 28th of November, 1913, the defendant devised a scheme or artifice to defraud certain individuals, copartnerships and 1054 corporations named in the indictment, whose names I shall presently give to you, and also other persons to the Grand Jury unknown, and further, that defendant did in the execution of or in attempting to execute or carry out and effectuate said scheme or artifice to defraud so devised, place or cause to be deposited or placed in the postoffice at Topeka, Kansas, certain letters or communications specifically described in counts one to twelve, both inclusive, of said indictment, as follows:

Count one, letter dated Topeka, Kansas, November 28, 1913, addressed to Spero, Michael & Son, 836 New York, signed "The Badders Company by George S. Badders."

Count two, letter dated Topeka, Kansas, November 28, 1913, addressed to Spero, Michael & Son, New York City signed "The Badders Company by George S. Badders."

Count three, letter dated Topeka, Kansas, December 1, 1913, to Lipps Bros., 622 Broadway New York City signed "The Badders Company by George S. Badders."

Count four, letter dated December 2, 1913, addressed to H. Kamber & Co., 24 University Place, New York City, signed "The Badders Company by George S. Badders."

"Count five, letter dated December 2, 1913, addressed to M. Glickman & Co., Philadelphia, Pa., signed "The Badders Company, by George S. Badders."

Count six, a letter dated Topeka, Kansas, December 4, 1913, addressed to Cohen, Goldman & Co., Broadway, New York, signed "The Badders Company by George S. Badders."

Count seven, letter dated Topeka, Kansas, December 6, 1913, addressed to Rosenwald & Weil, Chicago, Ill. signed "The Badders Company by George S. Badders."

Count eight, letter dated Topeka, Kansas, Dec. 6, 1913, addressed to Ornstein & Rice, St. Louis, Mo., signed "The Badders Company by George S. Badders."

Count nine, letter dated December 8, 1913, addressed to Cluett, Peabody & Co., Kansas City Mo., signed "The Badders Company by George S. Badders."

1055 Count ten, letter dated Topeka, Kansas, December 11, 1913, addressed to M. C. Lilley & Co., Columbus, Ohio, signed "The Badders Company by George S. Badders."

Count eleven, letter dated Topeka, Kansas, December 11, 1913, addressed to The Hartman Trunk Co., Chicago, Ill., signed "The Badders Company by George S. Badders."

Count twelve, letter dated Topeka, Kansas, December 29, 1913, addressed to Ely Walker Dry Goods Co., St. Louis, Mo., signed "The Badders Company by George S. Badders."

And that in so mailing or causing said letters to be so mailed, defendant, in the mailing or causing to be mailed each of said letters violated the provisions of said section 215 of the Penal Code.

The evidence on the part of the government failed to show that letters mentioned in counts one, seven, eight, ten and twelve were mailed, and for that reason alone, those counts are withdrawn from your consideration and you will return a verdict of not guilty on each of said counts.

The withdrawal of counts one, seven, eight, ten and twelve leaves for your consideration the remaining counts, towit, two, three, four, five, six, nine and eleven.

The nature of the scheme or artifice to defraud set out in each count of the indictment is in substance, that the defendant George S. Badders would falsely and fraudulently represent and pretend to the persons, corporations and partnerships named in the indictment, and to others, that the Badders Clothing Company, of which he was president, was a going concern, with large assets, and solvent, and able to pay for all goods that might be ordered and purchased by it or ordered and purchased by the defendant as the president of the Badders Clothing Company. That he, the said defendant, would order and purchase in the name of the Badders Clothing Company, large quantities of merchandise and dispose of the same for cash without paying for the same; that he designed and intended not to pay for the merchandise so ordered and purchased by him as aforesaid, but to obtain said merchandise, sell the same for cash and fraudulently convert said cash to his own use for personal gain, and in that way and by the means above stated, cheat and defraud the persons, copartnerships and corporations named in the indictment of the merchandise ordered and purchased of them by the defendant in the name of the Badders Clothing Company.

This in brief, gentlemen, is the substance of the scheme alleged to have been advised by the defendant.

After setting forth the scheme the indictment proceeds to state and charge that it was not true that the Badders Company had large assets. That it was not true that said company was solvent and a going concern, but upon the contrary was then owing large sums of money which it could not pay and which the defendant intended it should not pay; that the defendant knew that the twenty five thousand dollars subscription to the capital stock of the Badders Company was a pretended and not an actual increase in the stock of the company, and that it was not intended by the defendant to pay said pretended increase or that it should ever become available for the payment of goods which he (the defendant) might order in the name of the Badders Company.



The defendant when arraigned stood mute, whereupon the court directed the clerk to enter a plea for him of not guilty. This plea raises a presumption of innocence, and this presumption follows him throughout the trial and until it is overcome by the evidence in the case which satisfies you beyond a reasonable doubt of his guilt. The burden of proof is on the government. This burden does not shift during the trial but remains with the government throughout.

You will see, gentlemen, from what has gone before, that two things must have been done by the defendant and established to your satisfaction beyond a reasonable doubt by the evidence in the case before you are authorized to find him guilty. It must appear, first, that the defendant devised a scheme or artifice to defraud, and, second, that defendant for the purpose of executing such scheme or artifice to defraud, or attempting so to do, deposited, or 1057 caused to be deposited in the postoffice of the United States at Topeka, Kansas, for the purpose of having the same sent by the postoffice establishment of the United States, the letters mentioned, described and counted on in the counts now submitted to you for your consideration. Proof that said scheme or artifice to defraud was devised by the defendant within three years next before the filing of the indictment, to wit, April 22, 1914, satisfies the allegations as to the time the scheme was devised.

The essence of the existence of a scheme to defraud depends upon the intent with which the scheme was gotten up. If the intention was honest and upright and the scheme gotten up in good faith, and with the intention of carrying out the promises made therein, then there was no fraud; but if the defendant got up the scheme with the intention to cheat and defraud the persons named in the indictment, or any one of them, then it was a fraudulent scheme within the meaning of the statute under which he is indicted.

In determining what the intent of the defendant was you must take all the facts and circumstances in this case, including the fact, if it be a fact, of the good character of the defendant in the case, consider them in the light of each other, with a view of getting at the actual truth of what the intent of the defendant was. You do not ordinarily get at what the intention of a person is by declarations of his own. The intent is generally established by facts and circumstances. From these facts and circumstances, and of all the evidence in the case, you will determine what the intent was on the part of this defendant. The object and purpose of the statute under which this indictment was drawn was to protect the public against intentional efforts to despoil, and to prevent the postoffice establishment of the United States from being used to carry fraudulent schemes into effect. It makes but little difference what the specific representations were if they were false and fraudulent and made with the intention of carrying out a scheme, the object and purpose of which was to defraud.

1058 All the facts in the case gentlemen belong to you. As I have before stated, you are the sole judges of the credibility of the witnesses who have testified before you, and of the weight to be given to their testimony. While the court has the right probably



to discuss the facts involved in the case, it prefers not to do so, but to leave the question of fact solely to you, and if anything has during the trial of this case escaped the lips of the judge which might be considered a comment upon the testimony in any wise, that you will not consider. All the facts in the case belong to you.

The essence of this case may be summed up as follows:

First, has the fraudulent scheme set forth been established? Second, were the letters set forth in the various counts of the indictment submitted to you deposited in the United States mail as charged, and were they sent, if sent at all, with the intention that they should be delivered to the persons to whom they were addressed for the purpose of effectuating and carrying out the scheme.

As I have said, the presumption of innocence follows the defendants throughout the trial, and until it is expelled or overturned by the testimony in the case and his guilt established beyond a reasonable doubt. A reasonable doubt is one which naturally arises out of the evidence in the case. You are not required to be absolutely certain of the guilt of the defendant. You try the case upon the probabilities of guilt, but the probabilities of guilt must be so strong as to leave no reasonable doubt of the guilt of the accused. Or, to put it in still another form, it must establish guilt to a moral certainty. In other words, you must be morally certain of guilt before you can convict, certain to the extent that you would feel justified, under your oaths, in acting if it related to most important business transactions of your own. If you are certain to that extent, you have no reasonable doubt and you should convict.

Now, gentlemen, you may take the case. Remember what you are trying to do is to find out the real truth of the facts. Remember that under the terms of your oath when you have ascertained what the truth is, you shall frame your verdict accordingly.

1059 In rendering your verdict you shall pass upon the guilt or innocence of the defendant on each count submitted to you of this indictment. You can find him guilty on all counts or not guilty on all counts. You may find him guilty upon some count and not guilty upon others. A form of verdict will be handed to you by the court to be by you considered.

Forms of verdict have been prepared for your consideration, which, upon the first part, is a verdict of not guilty upon the counts I have mentioned; and the other form of verdict is in form proper if you find the defendant guilty, sign the verdict on each count as it is now written; if you find him not guilty, insert the word "not" before the word "guilty" on each of those counts.

I will hear any exceptions to the charge.

Mr. Robertson: I do not think your Honor's instructions are meant to mean, but I want to inquire; I do not think Your Honor means to say that the scheme must have been devised on the 28th day of November—

The Court: I have said in this charge that the date is not material if it was done within three years before the finding of this indictment, it is sufficient.

Mr. Hite: If Your Honor please, there was submitted certain requests, and I understand your Honor's practice is, so far as not given, they are excepted to.

The Court: You requested the court give certain instructions which the court refused to give, and they may be filed with the clerk, as refused, and to the refusal you except.

Mr. Hite: Yes. If Your Honor please, we ask the court to charge the jury that if the facts and circumstances proven are as consistent with the innocence as with the guilt of the defendant, that they cannot find him guilty.

1060 The Court: I so instruct.

The Court: Take the jury, Mr. Marshal, to their jury room, and let them consider their verdict.

(Jury retires at 1:05 P. M.)

1061 EXHIBIT No. 1.

In the District Court of the United States for the District of Kansas,  
First Division.

In the Matter of THE BADDERS CLOTHING COMPANY, Bankrupt.

In Bankruptcy. No. —.

*Demand.*

To George S. Badders:

SIR: As receiver of the Badders Clothing Company, appointed by the District Court of the United States for the District of Kansas on the 28th day of January, 1914, I make demand upon you personally and upon you as an officer of the Badders Clothing Company for the possession of property and assets belonging to the Badders Clothing Company not already turned over to me as following:

The corporate books of the Badders Clothing Company including the minute books of stockholders' and directors' meetings and the stock certificate book and all other books and papers having to do with the corporate management.

The cash books and sales books, together with sales slips and transcript of their record, all as and used in the conducting of the business of the Badders Clothing Company.

The daily balance book and the ledger showing accounts with customers used in conducting the business of the Badders Clothing Company.

All other books and papers belonging to and in anywise pertaining to the business of the Badders Clothing Company.

1062 All cash and evidences of indebtedness belonging to the Badders Clothing Company and not already delivered and turned over to me as receiver.

Respectfully,

GEO. A. CLARK,

*Receiver of the Badders Clothing Company.*

Copy.

Served Feb. 3, 1914, by giving to Geo. S. Badders the original of which this is a copy.

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EXHIBIT No. 2.

STATE OF KANSAS,

*Department of State:*

[SEAL.]

Chas. H. Sessions, Secretary of State.

To All to whom These Presents Shall Come, Greeting:

I, Chas. H. Sessions, Secretary of State of the State of Kansas, do hereby certify that the following and hereto attached is a true copy of Charter of The Marshall Clothing Company, the original of which is now on file and a matter of record in this office.

In Testimony Whereof, I hereto set my hand and cause to be affixed my official seal.

Done at the City of Topeka, this 3rd day of March, A. D., 1914.

CHAS. H. SESSIONS,

*Secretary of State,*

By J. T. BOTKIN,

*Asst. Secretary of State.*

### Charter of the Marshall Clothing Company.

The undersigned, citizens of the State of Kansas, do hereby voluntarily associate ourselves together for the purpose of forming a private corporation under the laws of the State of Kansas, and do hereby certify:

#### First.

That the name of this corporation shall be The Marshall Clothing Company.

#### Second.

That the purposes for which this corporation is formed are to transact a general merchandise business, including buying and selling clothing, hats, caps, boots, and shoes, and gent's furnishing goods, and all other articles of merchandise usually kept in a first class clothing and gent's furnishing goods store.

1064

#### Third.

That the place where its business is to be transacted is at Topeka, Shawnee County, Kansas.

#### Fourth.

That the term for which this corporation is to exist is fifty years.

#### Fifth.

That the number of directors of this corporation shall be five and the names and residences of those who are appointed for the first year are:

1. Martha G. Marshall, Topeka, Kansas.
2. T. W. Andrews, Rossville, Kansas.
3. T. E. Reinhardt, Topeka, Kansas.
4. J. E. Moode, Topeka, Kansas.
5. J. J. Schenck, Topeka, Kansas.

## Sixth.

That the estimated value of the goods, chattels, lands, rights and credits owned by the corporation is sixty thousand dollars.

That the amount of the capital stock of this corporation shall be \$60,000.00 Sixty Thousand Dollars, and shall be divided into six hundred shares, of One hundred Dollars each.

## Seventh.

That the names and residences of the stockholders of said corporation, and the number of shares held by each, are as follows, to wit:

Martha G. Marshall, Topeka, Kansas.....	300
T. W. Andrews, Rossville, Kansas.....	297
T. E. Reinhardt, Topeka, Kansas.....	1
J. E. Moode, Topeka, Kansas.....	1
J. J. Schenck, Topeka, Kansas.....	1

In Testimony Whereof, We have hereunto subscribed our names, this 3rd day of July, A. D. 1911.

1065

MARTHA G. MARSHALL.  
T. W. ANDREWS.  
T. E. REINHARDT.  
J. E. MOODE.  
J. J. SCHENCK.

STATE OF KANSAS,  
*Shawnee County, ss:*

Personally appeared before me, a Notary Public in and for Shawnee County, Kansas, the above named Martha G. Marshall, T. W. Andrews, T. E. Reinhardt, J. E. Moode, and J. J. Schenck, who are personally known to me to be the same persons who executed the foregoing instrument of writing, and duly acknowledged the execution of the same.

In Testimony hereof, I have hereunto subscribed my name and affixed my notarial seal, this 3rd day of July, A. D., 1911.

[SEAL.]

M. S. ATCHISON,  
*Notary Public.*

My Commission expires April 1st, 1915.

Office of Secretary of State.

Received of Marshall Clothing Co. the sum of eighty-seven and 50/100 Dollars, the same being the charter fee.

Dated this 6 day of July A. D. 1911.

CHAS. H. SESSIONS,  
*Secretary of State of Kansas,*  
By E. A. CORNELL,  
*Chief Clerk.*

Filed July 6, 1911. Chas. H. Sessions, Secretary of State.

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EXHIBIT No. 3.

STATE OF KANSAS,  
*Department of State:*

[SEAL.]

Chas. H. Sessions, Secretary of State.

To All to Whom These Presents Shall Come, Greeting:

I, Chas. H. Sessions, Secretary of State of the State of Kansas, do hereby certify that the following and hereto attached is a true copy of Annual Statement of The Marshall Clothing Co. for year ending December 31, 1911, the original of which is now on file and a matter of record in this office.

In Testimony Whereof, I hereto set my hand and cause to be affixed my official seal.

Done at the City of Topeka, this 3rd day of March, A. D. 1914.

CHAS. H. SESSIONS,  
*Secretary of State,*

[SEAL.]

By J. T. BOTKIN,  
*Asst. Secretary of State*

## Domestic Corporation.

*Annual Statement of The Marshall Clothing Company.*

Incorporated under Laws of the State of Kansas, Located at  
Topeka, Kansas.

For the year ending December 31, 1911.

Statement of the Condition of the Corporation December 31, 1911.

Authorized Capital, \$60,000.  
Par Value per Share, \$100.00.  
Paid up Capital, \$60,000.

Resources.	Dollars, cts.	Liabilities.	Dollars, cts.
Bills receivable .....		Capital paid up.....	\$60,000
Real estate .....		Surplus .....	
Personal property fix- tures .....	\$5,000	Undivided profits ...	
Stocks, bonds, and other securities ....		Bills payable .....	
Merchandise .....	15,000	Accounts payable ....	960
Cash on hand .....	960	Bonded indebtedness .	
Due from banks.....		Encumbrance on real estate or plant ...	
Accounts receivable...	5,000	Bills rediscounted ...	
Judgments .....			
Total .....	\$25,960	Total .....	\$60,960

1067 *Trustees and Directors*

Name.	Address.
Geo. S. Badders.....	Topeka, Ka.
T. E. Reinhardt.....	" "
I. J. Frankenstein.....	Hillsdale, Mich.
W. A. Byers.....	Topeka, Ka.
Rob't Stone.....	" "

*Officers of the Corporation.*

	Name.	Address.
President .....	Geo. S. Badders.....	Topeka, Kansas.
Vice President .....	T. E. Reinhardt .....	" "
Treasurer .....	W. A. Byers .....	" "
Secretary .....	I. J. Frankenstein .....	Hillsdale, Mich.
General Manager.		

*List of Stockholders and Number of Shares of Stock Owned By Each.*

Name.	Address.	No. shares.
Geo. S. Badders.....	Topeka .....	497
W. A. Byers.....	.....	1
Rob't Stone .....	.....	1
T. E. Reinhardt.....	.....	100
I. J. Frankenstein....	Hillsdale .....	1

STATE OF KANSAS,

*Shawnee County, ss:*

We, Geo. S. Badders, President, and I. J. Frankenstein, Secretary of the above named corporation, do solemnly swear that the above is a full and complete statement of the condition of the capital stock of this corporation on the 31st day of December, 1911, and of the resources and liabilities thereof on that day, for the year ending December 31, 1911 as shown by the books of the same. Also, that the above is a complete list of the stockholders of this corporation and shows the postoffice address and number of shares of the stock of this corporation held by each, as well as a list of the trustees or directors thereof and the officers elected and appointed for the ensuing year, and that such election was held on the 15th day of 1911, and was conducted in conformity with the by-laws of the corporation.

GEO. S. BADDERS, *President*  
I. J. FRANKENSTEIN, *Secretary*

Subscribed and sworn to before me this 24th day of January 1912.  
[SEAL.] FLORENCE SMILEY,  
*Notary Public.*

My Commission expires Aug. 14, 1915.

Fee for filing this report (one dollar) herewith enclosed.

Filed Jan. 29, 1912. Chas. H. Sessions, Secretary of State.

## EXHIBIT No. 4.

STATE OF KANSAS,

*Department of State.*

[SEAL.]

Chas. H. Sessions, Secretary of State.

To All to Whom These Presents Shall Come, Greeting:

I, Chas. H. Sessions, Secretary of State of the State of Kansas do hereby certify that the following and hereto attached is a true copy of the certificate of amendment of the Charter of the Badde Clothing Company, the original of which is now on file and a matter of record in this office.

In Testimony Whereof, I hereto set my hand and cause to be affixed my official seal.

Done at the City of Topeka, this 3rd day of March, A. D. 1914.

[Seal of Secretary of State.]

CHAS. H. SESSIONS,  
*Secretary of State,*

By J. T. BOTKIN,  
*Asst. Secretary of State.*

Topeka, Kansas, January 30, 1912.

#### EXHIBIT A.

*Minutes of Special Meeting of the Stock Holders of the Marshall Clothing Company, a Corporation, of Topeka, Kansas.*

1069 A special meeting of the stock-holders of The Marshall Clothing Company, a corporation, was held at the office of Stone & McDermott in the New England Building at 501 Kansas Avenue, Topeka, Kansas, on 30th day of January, 1912. The following named stockholders were present; George S. Badders, representing and owning five hundred and ninety seven shares of stock in the corporation; I. Frankenstein, representing and owning one share of stock in said corporation; Robert Stone representing and owning one share of stock in said corporation; W. A. Byers, representing and owning one share of stock in said corporation; representing all together the total of six hundred shares of stock in said corporation, being all of the outstanding stock thereof. Mr. Badders, President of the said corporation, occupied the chair and I. Frankenstein, Secretary of said corporation acted as secretary of said meeting.

And thereupon the president announced that said meeting had been called for the purpose of amending the charter of said corporation by reducing its authorized stock and by changing the name of said corporation from "The Marshall Clothing Company" to "The Badders Clothing Company" and that each and every stockholder had been notified of the time and place of said meeting and the purpose thereof.

And upon motion of said I. Frankenstein, the following resolution was adopted. Resolved: that the charter of this corporation be changed in the following respects:

1. That the name of said corporation shall be changed so as to read "The Badders Clothing Company."

2. That the authorized capital stock of said corporation shall be decreased from sixty thousand to twenty five thousand dollars.

It was further moved and carried that the president and secretary of the corporation would be authorized to certify to the amendments to said charter as adopted at this meeting and submit the same to the State Charter Board for its approval and to publish the notice of such change as provided for in the statutes, and thereupon the meeting stood adjourned.



STATE OF KANSAS,  
*Shawnee County, ss:*

We the undersigned, president and secretary, respectively, of The Marshall Clothing Company, a corporation, organized under the laws of Kansas, do hereby certify that at a called meeting of the stockholders of said corporation, attended by all of the members and stockholders of said corporation, and called for the purpose of changing the name and reducing the capital stock thereof a resolution was adopted whereby the name of said corporation was changed from "The Marshall Clothing Company" to "The Badders Clothing Company" and the amount of stock authorized was reduced from sixty thousand of twenty five thousand dollars. A copy of said minutes is hereto attached marked Exhibit A and made a part hereof.

We do further hereby certify that the actual available assets of the corporation represented by goods, wares and merchandise and furnishing and fixtures amount to more than twenty five thousand dollars, and that the outstanding indebtedness of said corporation does not amount to more than two thousand of dollars.

Topeka, Kansas, Jan'y 30, 1912.

[SEAL.]

GEO. S. BADDERS, *President.*

Attest:

I. FRANKENSTEIN.

TOPEKA, KANSAS, Feb'y 2, 1912.

Received of Marshall Clothing Co. Two and 50/100 Dollars Character fee.

CHAS. H. SESSIONS,  
*Secretary of State.*

By E. A. CORNELL,  
*Chief Clerk.*

1071 Filed Feb. 2, 1912. Chas. H. Sessions, Secretary of State.

Approved February 2, 1912.

JOHN S. DAWSON,  
 CHAS. H. SESSIONS.

A—No. 7. 567.

EXHIBIT No. 5.

STATE OF KANSAS,  
*Department of State: [SEAL.]*

Chas. H. Sessions, Secretary of State.

To All to Whom These Presents Shall Come, Greeting:

I, Chas. H. Sessions, Secretary of State of the State of Kansas, do hereby certify that the following and hereto attached is a true copy of annual statement of The Badders Clothing Company for year ending

December 31, 1912 the original of which is now on file and a matter of record in this office.

In testimony whereof, I hereto set my hand and cause to be affixed my official seal. Done at the City of Topeka, this 3rd day of March, A. D. 1914.

[SEAL.]

CHAS. H. SESSIONS,  
*Secretary of State,*  
 By J. T. BOTKIN,  
*Ass't Secretary of State.*

### Domestic Corporation.

#### *Annual Statement of Badders Clothing Company.*

Incorporated under laws of the State of Kansas, located at Topeka, Kansas, for the year ending December 31, 1912.

Statement of the Condition of the Corporation December 31, 1912.

Authorized Capital, \$25,000.

Par Value per Share, \$100.

Paid-up Capital, \$25,000.

Market Value per share, —.

1072	Resources.	Dollars, cts.	Liabilities	Dollars, cts.
	Bills receivable .....		Capital paid up.....	25,000.
	Real estate .....		Surplus .....	
	Personal property ...	5,466.28	Undivided profits .....	
	Stocks, bonds, and		Bills payable .....	7,241.65
	other securities .....		Accounts payable ...	27,362.78
	Merchandise .....	42,288.32	Bonded indebtedness .....	
	Cash on hand.....	352.70	Encumbrance on real	
	Due from banks .....		estate or plant .....	
	Accounts receivable .	10,507.89	Bills rediscounted .....	
	Judgments .....			
	Total .....	58,615.19	Total .....	59,604.43

#### *Trustees and Directors.*

Name.	Address.
Goe. S. Badders .....	Topeka, Kansas.
I. J. Frankenstein .....	Topeka, Kansas.
Robert Stone .....	Topeka, Kansas.
Harry J. Frankenstein .....	Topeka, Kansas.
W. A. Byers .....	Horton, Kansas.

*Officers of the Corporation.*

	Name.	Address.
President .....	Geo. S. Badders .....	Topeka, Kansas.
Vice-President .....	W. A. Byers .....	Horton, Kansas.
Treasurer .....		
Secretary .....	I. J. Frankenstein .....	Topeka, Kansas.
General Manager .....		

*List of Stockholders and Number of Shares of Stock Owned by Each.*

Name.	Address.	No. Shares.
Geo. S. Badders .....	Topeka, Kans .....	123
W. A. Byers .....	Horton, Kansas .....	1
I. J. Frankenstein .....	Topeka, Kansas .....	121
H. J. Frankenstein .....	Rochester, N. Y. ....	1
Anna M. Frankenstein .....	Topeka, Kansas .....	2
Rob't Stone .....	Topeka, Kansas .....	2

1073 STATE OF KANSAS,  
*Shawnee County, ss:*

We, Geo. S. Badders, President, and I. J. Frankenstein, Secretary, of the above named corporation, do solemnly swear that the above is a full and complete statement of the condition of the capital stock of this corporation on the 31st day of December, 1912, and of the resources and liabilities thereof on that day, for the year ending December 31, 1912, as shown by the books of the same. Also, that the above is a complete list of the stockholders of this corporation, and shows the post-office address and number of shares of the stock of this corporation held by each, as well as a list of the trustees or directors thereof and the officers elected and appointed for the ensuing year, and that such election was held on the ninth day of February 1912, and was conducted in conformity with the by-laws of the corporation.

GEO. S. BADDERS, *President.*  
 I. J. FRANKENSTEIN, *Secretary.*

Subscribed and sworn to before me, this eighth day of February, 1913.

[SEAL.]

ROBERT STONE,  
*Notary Public.*

My commission expires Aug. 14, 1915.

Fee for filing this report (one dollar) herewith enclosed.

Filed Feb. 10, 1913.

CHAS. H. SESSIONS,  
*Secretary of State.*

## EXHIBIT No. 6.

STATE OF KANSAS,

*Department of State:*

[SEAL.]

Chas. H. Sessions, Secretary of State.

To all to whom these presents shall come Greeting:

I, Chas. H. Sessions, Secretary of State of the State of Kansas, do hereby certify that the following and hereto attached is a true copy of statement of Increase of Capital Badders Clothing Company the original of which is now on file and a matter of record in this office.

In testimony whereof, I hereto set my hand and cause to be affixed my official seal.

1074 Done at the City of Topeka, this 3rd day of March, A. D. 1914.

[SEAL.]

CHAS. H. SESSIONS,

*Secretary of State,*

By J. T. BOTKIN,

*Ass't Secretary of State.*

*Statement of Increase of Capital of the Badders Clothing Company, Located at Topeka, Kansas, in the County of Shawnee and State of Kansas.*

THE STATE OF KANSAS,

*County of Shawnee, ss:*

We, Geo. S. Badders, President, and I. J. Frankenstein, Secretary, of said corporation, hereby certify that at a meeting of its stockholders held on the 7th day of February, 1913, by an affirmative vote representing two thirds of the capital thereof, a resolution was adopted increasing its capital stock from Twenty Five Thousand Dollars to Thirty Five Thousand Dollars, to be divided into 100 Shares of \$100.00 each; and further say, that the names and residences of the subscribers for said increase of stock and the number of shares subscribed for by each are hereinafter set forth; and we further say, that 100 per cent of said increase of stock has been fully paid in.

Name.	Residence.	No. of Shares.
Geo. S. Badders.....	Topeka, Kansas.....	100

GEO. S. BADDERS, *President.*I. J. FRANKENSTEIN, *Secretary.*

## Office of Secretary of State.

TOPEKA, KANSAS, March 7, 1913.

Received of Badders Clothing Co. Ten Dollars, fee for the within increase.

CHAS. H. SESSIONS,

*Secretary of State,*By C. D. YETTER, *Chief Clerk.*

Approved by the Charter Board this nineteenth day of February, 1913.

JOHN S. DAWSON,

CHAS. H. SESSIONS.

Filed Mar. 7, 1913.

CHARLES H. SESSIONS,

*Secretary of State.*

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EXHIBIT No. 7.

STATE OF KANSAS,

*Department of State:*

[SEAL.]

Chas. H. Sessions, Secretary of State.

To all to whom these presents shall come, Greeting:

I, Chas. H. Sessions, Secretary of State of the State of Kansas, do hereby certify that the following and hereto attached is a true copy of Statement of Increase of Capital Badders Clothing Company the original of which is now on file and a matter of record in this office.

In testimony whereof, I hereto set my hand and cause to be affixed my official seal. Done at the City of Topeka, this 3rd day of March, A. D. 1914.

[SEAL.]

CHAS. H. SESSIONS,

*Secretary of State,*

By J. T. BOTKIN,

*Ass't Secretary of State.*

*Statement of Increase of Capital of the Badders Clothing Company,  
Located at Topeka, in the County of Shawnee and State of Kan-  
sas.*

THE STATE OF KANSAS,

*County of Shawnee, ss:*

We, George S. Badders, President, and Ira W. Burdick, Secretary, of said corporation, hereby certify that at a meeting of its stockholders held on the thirteenth day of November, 1913, by an affirmative vote representing two thirds of the capital thereof, a reso-

lution was adopted increasing its capital stock from Thirty Five Thousand Dollars to Sixty Thousand Dollars, to be divided into 250 Shares of \$100.00 each; and further say, that the names and residences of the subscribers for said increase of stock and the number of shares subscribed for by each are as hereinafter set forth; and we further say, that 100 per cent of said increase of stock has been fully paid in.

Name.	Residence.	No. of Shares.
George S. Badders.....	Topeka, Kansas.....	250

GEO. S. BADDERS, *President*.  
IRA W. BURDICK, *Secretary*.

1076                      Office of Secretary of State.

TOPEKA, KANSAS, Nov. 17, 1913.

Received of Badders Clothing Company Twenty five and No/100 Dollars, fee for the within increase.

CHAS. H. SESSIONS,  
*Secretary of State*,  
By E. A. CORNELL, *Chief Clerk*.

Approved by the Charter Board this 15th day of November, 1913.

JOHN S. DAWSON,  
CHAS. H. SESSIONS,  
CHAS. M. SAWYER.

Filed Nov. 17, 1913. Charles H. Sessions, Secretary of State.

### EXHIBIT No. 8.

TOPEKA, KAN., Nov. 12, 1913.

Six months after date I promise to pay to the order of The Badders Clothing Company, at the Bank of Topeka, Topeka, Kansas, Twenty five Thousand and No/100 Dollars, with interest at 8 per cent. per annum after date until paid. Value received.

GEO. S. BADDERS.

P. O. Address: —.

## EXHIBIT No. 9.

George S. Badders, President.  
Seward R. Graham, Sec. Treas.

Stein-Bloch Smart Clothes.

The Badders Company,  
Seventh and Kansas Avenue, Topeka, Kansas.

November Twenty-ninth, Nineteen Hundred Thirteen.  
Globe Knitting Works, Grand Rapids, Mich.

GENTLEMEN: Your favor of the 26th is at hand. We have never in our experience had an account sent through an agency for collection and we trust the Globe Knitting Works will not be the first to do this. We have completed arrangements for increasing our capital stock \$25,000.00, in fact the amount has been subscribed and you- account will be paid December 20th on a net basis if you demand it. We believe, however, you will see our position and we look for your advice to discount your statement on December 20th.

Yours very truly,

THE BADDERS COMPANY,  
By GEO. S. BADDERS.

G. S. B.—B.

## EXHIBIT No. 10.

George S. Badders, President.  
Seward R. Graham, Sec. Treas.

Stein-Bloch Smart Clothes.

The Badders Company,  
Seventh and Kansas Avenue, Topeka, Kansas.

December Eighth, Nineteen Hundred Thirteen.  
Gloversville Auto Glove Co., Gloversville, N. Y.

GENTLEMEN: We are pleased to advise you that we have perfected arrangements for increasing our Capital Stock \$25,000.00. You can look for payment of your account December 20th. On December third you advised us that we could avail ourselves of our discount if account was paid promptly on receipt of your letter. Please advise us if net remittance will be expected on the 20th or if you will permit to take our discount? We trust you will advise the latter.

Yours very truly,

THE BADDERS COMPANY,  
By GEO. S. BADDERS.

G. S. B.—B.

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## EXHIBIT No. 11.

Stein-Bloch Smart Clothes.

George S. Badders, President.  
Seward R. Graham, Sec. Treas.

The Badders Company,  
Seventh and Kansas Avenue, Topeka, Kansas.

November Twenty-ninth, Nineteen Hundred Thirteen.  
Gloversville Auto Glove Co., Gloversville, N. Y.

GENTLEMEN: Your favor of the 26th. Our Mr. Badders has been out of the City for a couple of weeks and that is the reason your account was not taken up with you. We have just completed plans for increasing our Capital \$25,000.00, in fact the amount has been subscribed, and if you will bear with us a few days, you will receive check on a net basis if you demand it but we will of course be glad to have you advise us to take our discount on December 20th. Please advise.

Yours very truly,

THE BADDERS COMPANY,  
By GEO. S. BADDERS.

G. S. B.—B.

## EXHIBIT No. 12.

Stein-Bloch Smart Clothes.

George S. Badders, Pres.  
Seward R. Graham, Sec. Treas.

The Badders Company,  
Seventh and Kansas Avenue, Topeka, Kansas.

December Fifth, Nineteen Hundred Thirteen.  
J. & M. Wolf, Esq., 343 Broadway, New York City.

GENTLEMEN: Yours of the 1st inst. received. You evidently did not receive our letter of recent date in which we asked to  
1079 Dec. 20th in which to make payment of this account. We have just increased our Capital stock \$25,000.00 and will not only be in position to discount promptly but will also be in a position to anticipate future statements. Thanking you for your consideration, we are,

Yours very truly,

THE BADDERS COMPANY,  
By GEO. S. BADDERS.

G. S. B.—B.



## EXHIBIT No. 13.

Stein-Bloch Smart Clothes.

George S. Badders, President.  
Seward R. Graham, Sec. Treas.

The Badders Company,  
Seventh and Kansas Avenue, Topeka, Kansas.

November Twenty-ninth,  
Nineteen Hundred Thirteen.

J. & M. Wolf, 343 Broadway, New York City.

GENTLEMEN: Replying to yours of the 26th instant we find that you were advised on Nov. 17th that our Mr. Badders was out of city and your matter would be attended to on his return November 22nd.

We have perfected plans for increasing our Capital stock \$25,000.00 in fact the amount has been subscribed. Your account will be taken care of not later than December 20th and we trust you will appreciate the situation to the extent of allowing payment as above.

We are sure our future transactions will be to your entire satisfaction from the standpoint of prompt payment.

Yours very truly,

THE BADDERS COMPANY,  
By GEO. S. BADDERS.

G. S. B.—B.

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## EXHIBIT No. 14.

Stein-Bloch Smart Clothes.

George S. Badders, President.  
Seward R. Graham, Sec. Treas.

The Badders Company,  
Seventh and Kansas Avenue, Topeka, Kansas.

Received Dec. 3, 1913.  
Answered by ———.

November Twenty-ninth,  
Nineteen Hundred Thirteen.

Rose Brothers, 708 Broadway, New York City.

GENTLEMEN: Yours of the 26th instant received. We are pleased to advise you that we have perfected arrangements for increasing our Capital Stock \$25,000.00, in fact the amount has been subscribed and we will take care of your account at the earliest possible

moment which will not be later than December 20th. Trusting that you will appreciate the situation to the extent of bearing with us to the above extent, we are

Yours very truly,

THE BADDERS COMPANY,  
By GEO. S. BADDERS.

EXHIBIT No. 15.

Stein-Bloch Smart Clothes.

George S. Badders, President.  
Seward R. Graham, Sec. Treas.

The Badders Company,  
Seventh and Kansas Avenue, Topeka, Kansas.

December Eighth,  
Nineteen Hundred Thirteen.

Gotham M'fg Co., Troy, N. Y.

GENTLEMEN: Your favor December fifth. We wrote you several days ago asking to December to settle your account and on 1081 Nov. 25th you replied suggesting that we take up a portion of the bills before that time and thus save our full discount. We have arranged to increase our capital stock \$25,000 and are also figuring on our sale and wish you would advise us the very best discount you will allow on December 20th. We trust you will advise us to take the full discount.

Yours very truly,

THE BADDERS COMPANY,  
By GEO. S. BADDERS.

G. S. B.—B.

EXHIBIT No. 16.

Stein-Bloch Smart Clothes.

George S. Badders, President.  
Seward R. Graham, Sec. Treas.

The Badders Company,  
Seventh and Kansas Avenue, Topeka, Kansas.

December Fifth,  
Nineteen Hundred Thirteen.

Robischon & Peckham Co., New York City.

GENTLEMEN: Your favor of the third is at hand and we appreciate your indulgence until the 20th. You will hear from us promptly at that time. You will be pleased to learn that we have

just increased our capital stock 25,000.00 and now have \$60,000.00 capital.

Yours very truly,

THE BADDERS COMPANY,  
By GEO. S. BADDERS.

G. S. B.—B.

EXHIBIT No. 17.

Stein-Bloch Smart Clothes.

George S. Badders, President.  
Seward R. Graham, Sec. Treas.

The Badders Company,  
1082 Seventh and Kansas Avenue, Topeka, Kansas.

December Fourth,  
Nineteen Hundred Thirteen.

Schwartz & Jaffee, 568 Broadway, New York City.

GENTLEMEN: We have your favor of the 28th ultimo and in reply beg to advise, as you have already doubtless learned through the mercantile agencies, that we have increased our capital stock to \$60,000.00 and this together with receipts from sale which starts tomorrow will place us in position to not only meet our discounts promptly but to anticipate as well.

Please advise us what is the best discount you can allow on your fall bills on December 20th.

Yours very truly,

THE BADDERS COMPANY,  
By GEO. S. BADDERS.

G. S. B.—B.

EXHIBIT No. 18.

Stein-Bloch Smart Clothes.

George S. Badders, President.  
Seward R. Graham, Sec. Treas.

The Badders Company,  
Seventh and Kansas Avenue, Topeka, Kansas.

December Sixth,  
Nineteen Hundred Thirteen.

Pioneer Suspender Co., Chicago, Ill.

GENTLEMEN: Please rush order for suspenders given you recently by our Mr. Boyd.

Yours very truly,

THE BADDERS COMPANY,  
By GEO. S. BADDERS.

G. S. B.—B.

Received Dec. 11, 1913.

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## EXHIBIT No. 19.

Stein-Bloch Smart Clothes.

George S. Badders, President.  
Seward R. Graham, Sec. Treas.

The Badders Company,  
Seventh and Kansas Avenue, Topeka, Kansas.

December Fourth,  
Nineteen Hundred Thirteen.

Pioneer Suspender Co., Philadelphia, Pa.

GENTLEMEN: Please ship balance of garters on order on which we have only ordered out a part. Please rush. We are starting big sale tomorrow and need them.

Yours very truly,

THE BADDERS COMPANY,  
By GEO. S. BADDERS.

G. S. B.—B.

Received, Dec. 8, 1913.

## EXHIBIT No. 20.

Stein-Bloch Smart Clothes.

George S. Badders, President.  
Seward R. Graham, Sec. Treas.

The Badders Company,  
Seventh and Kansas Avenue, Topeka, Kansas.

Received Dec. 5, 1913.

December Third,  
Nineteen Hundred Thirteen.

GENTLEMEN: For your information we wish to advise you that our store will be closed until Friday when we start a very sensational sale, in fact our first advertisement will probably be headed "On the verge of Bankruptcy".

We wished to advise you of this as you will undoubtedly hear of our sale through the trade journals. Dun and Bradstreet are familiar with details.

Yours very truly,

THE BADDERS COMPANY,  
By GEO. S. BADDERS.

G. S. B.—B.

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## EXHIBIT No. 21.

Stein-Bloch Smart Clothes.

George S. Badders, President.  
Seward R. Graham, Sec. Treas.

The Badders Company,  
Seventh and Kansas Avenue, Topeka, Kansas.

November Twenty-eighth,  
Nineteen Hundred Thirteen.

Maurice Lesser & Co., 8 W. 13th St., New York City.

GENTLEMEN: Referring to yours of the 6th instant. Please send us thirty coats of your No. 2521 (or 2021, figure indistinct) black gaberdine in following sizes:

Sizes.....	35	36	37	38	40	42	44
	2	5	6	8	4	3	2

Please send coat with regular square shoulders and with belted back if you have belted back coats in stock. Do not delay shipment however for belted backs. Send them if you have them. Please rush.

Yours very truly,

THE BADDERS COMPANY,  
By GEO. S. BADDERS.

G. S. B.—B.

## EXHIBIT No. 22.

Stein-Bloch Smart Clothes.

George S. Badders, President.  
Seward R. Graham, Sec. Treas.

The Badders Company,  
Seventh and Kansas Avenue, Topeka, Kansas.

November Twenty-sixth,  
Nineteen Hundred Thirteen.

Cohen, Goldman & Co., New York City.

GENTLEMEN: We are in receipt of your sample raincoat cloths #6642 and #6225 at \$10.50 and \$8.50.

Please send us forty coats of the \$8.50 quality in following sizes:

Size .....	35	36	37	38	40	42	44
No. Coats .....	4	6	8	10	5	4	3

Please rush.

Yours very truly,

THE BADDERS COMPANY,  
By GEO. S. BADDERS.

G. S. B.—B.

Dec. 1, 1913.

## EXHIBIT No. 23.

Stein-Bloch Smart Clothes.

George S. Badders, President.  
Seward R. Graham, Sec. Treas.

The Badders Company,  
Seventh and Kansas Avenue, Topeka, Kansas.

November Twenty-sixth,  
Nineteen Hundred Thirteen.

Jacobs & Harris, 41 Union Square, West, New York City.

Nov. 20, 1913.

GENTLEMEN: Referring to the matter of gaberdines you may send us coats like sample submitted in shade of cloth inclosed in the following sizes:

(Regular shoulders, belted back at \$9.25.)

Size .....	34	35	36	37	38	40	42	44
No. Coats .....	2	4	6	6	10	6	4	2
(Shipped .....	4		7	6	7	5	4	

Please rush.

Yours very truly,

THE BADDERS COMPANY,  
By GEO. S. BADDERS.

G. S. B.—B.

## EXHIBIT No. 24.

Stein-Bloch Smart Clothes.

George S. Badders, President.  
Seward R. Graham, Sec. Treas.

1086 The Badders Company,  
Seventh and Kansas Avenue, Topeka, Kansas.

November Twelfth, Nineteen Hundred Thirteen.  
Rose Brothers, 708 Broadway, New York City.

GENTLEMEN: Yours of the fifth. Please send us fifty coats of your \$5.25 as follows:

Size .....	34	35	36	37	38	39	40	42	44
Raglan .....	2	3	4	4	4	3	2	2	2
Regular .....	2	3	4	4	4	3	2	2	1

The above are for immediate. Please rush. We will send you sizes on 100 coats for Feb. 15th delivery in a couple of weeks.

Yours very truly,

THE BADDERS COMPANY,  
By GEO. S. BADDERS.

G. S. B.—B.

We are pleased with your coat. It is the best we have seen for the money.

BADDERS CO.

(Stamped:) Received Nov. 15, 1912. Answered — — — by  
— — —.

(In blue pencil:) In works will send within a very few days.

#### EXHIBIT No. 25.

Stein-Bloch Smart Clothes.

George S. Badders, President.  
Seward R. Graham, Sec. Treas.

The Badders Company,  
Seventh and Kansas Avenue, Topeka, Kansas.

November Twelfth, Nineteen Hundred Thirteen.  
Gloversville Auto Glove Co., Gloversville, N. Y.

1087 GENTLEMEN: Your invoice September 20th order No. W.  
507. Please duplicate order in its entirety or as nearly as  
you can do so. Please rush.

Yours very truly,

THE BADDERS COMPANY,  
By GEO. S. BADDERS.

G. S. B.—B.

#### EXHIBIT No. 26.

Stein-Bloch Smart Clothes.

George S. Badders, President.  
Seward R. Graham, Sec.-Treas.

The Badders Company,  
Seventh and Kansas Avenue, Topeka, Kansas.

November Twelfth, Nineteen Hundred Thirteen.  
Kohn Bros. & Co., Cleveland, Ohio.

GENTLEMEN: Please send twenty five coats of your gaberdine belt in back, etc., like sample sent of your No. 7787 at \$12.00 in following sizes.

34	35	36	37	38	39	40	42	44
2	3	4	4	4	3	2	2	1

Please rush.

Yours very truly,

THE BADDERS COMPANY,  
By GEO. S. BADDERS.

G. S. B.—B.

EXHIBIT No. 27.

Stein-Bloch Smart Clothes.

George S. Badders, President.

Seward R. Graham, Sec. Treas.

The Badders Company,  
Seventh and Kansas Avenue, Topeka, Kansas.

1088 November First, Nineteen Hundred Thirteen.  
Rice Stix D. C. Co., St. Louis, Mo.

GENTLEMEN: Our recent order for white shirts with attached and detached collars. Please rush and advise.

Yours very truly,

THE BADDERS COMPANY,  
By GEO. S. BADDERS.

G. S. B.—B.

(Stamped:) Parcel Post. Dept. F. Filed by 415. Locations  
BX6. F. 5442. Write clearly the order No. on the line.

EXHIBIT No. 28.

Stein-Bloch Smart Clothes.

George S. Badders, President.

Seward R. Graham, Sec.-Treas.

The Badders Company.

Seventh and Kansas Avenue, Topeka, Kansas.

December Third, Nineteen Hundred Thirteen.

GENTLEMEN: For your information we wish to advise you that our store will be closed until Friday when we start a very sensational sale, in fact our first advertisement will probably be headed "On the verge of Bankruptcy."

We wished to advise you of this as you will undoubtedly hear of



our sale through the trade journals. Dun and Bradstreet are familiar with details.

Yours very truly,

THE BADDERS COMPANY,  
By GEO. S. BADDERS.

G. S. B.—B.

(Stamped:) Rec'd Dec. 5, 1913. The S. B. Co.

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EXHIBIT No. 29.

Stein-Bloch Smart Clothes.

Geo. S. Badders, President.  
Seward R. Graham, Sec.-Treas.

The Badders Company.

Seventh and Kansas Avenue, Topeka, Kansas.

December 11, 1913.

Stein-Bloch Company, Rochester, N. Y.

GENTLEMEN: Will get at those daily reports Sunday and get them up to date. Sale going slow account warm weather. Will try and get some ginger into it tomorrow and Saturday.

Very truly yours,

THE BADDERS COMPANY,  
By GEO. S. BADDERS.

G. S. B.—B.

(Stamped:) Rec'd Dec. 15, 1913. The S. B. Co.

EXHIBIT No. 30.

Stein-Bloch Smart Clothes.

George S. Badders, President.  
Seward R. Graham, Sec.-Treas.

The Badders Company.

Seventh and Kansas Avenue, Topeka, Kansas.

May Twenty-ninth, Nineteen Hundred Thirteen.

Geo. Guggenheim, Esq., Stein-Bloch Company, Rochester, N. Y.

DEAR MR. GUGGENHEIM: I am pleased to advise you that Mr. S. will succeed Mr. Frankenstein as Secretary-Treasurer of the Badders Company effective this date. Mr. Graham has purchased \$2,500 in stock and will take more later. He will spend several days each

1090 month in Topeka for the present and expects later to move here. (832) I certainly appreciate the favorable report your company made to Mr. Graham on The Badders Company and myself. You will never have cause to regret the confidence you have reposed in me.

It is with considerable personal pride that I call your attention to the inclosed list of stockholders, who have taken one share each (\$100.00 par value) in our Company. For your personal information I have placed opposite their names an estimate of their personal worth.

With the co-operation of Mr. Graham and this splendid list of the best men in the City of Topeka as stockholders and boosters nothing can stop the Badders Company from taking her place among the leading clothing stores of this section.

With kind personal regards to Mr. L. N. Stein and yourself, I am

Very truly yours,

GEORGE S. BADDERS.

*Stockholders in the Badders Company Holding One Share Each.*

Robert Stone, Lawyer .....	\$75,000
N. B. Burge, Investments .....	50,000
E. L. O'Neil, Lawyer .....	15,000
C. A. Moore, Life Insurance .....	20,000
Arthur Capper, Publisher .....	400,000
J. Will Kelley, Sec'y Commercial Club .....	20,000
L. W. Wilson, Realty .....	30,000
E. R. Simon, Ex County Attorney .....	25,000
C. B. Burge, City Clerk .....	12,000
F. M. Newland, City Commissioner .....	25,000
H. L. Cook, Sec'y State Fair Ass'n .....	50,000
Scott Hopkins, Pres. Prudential Trust Co. ....	50,000
S. E. Cobb, Vice-Pres. Bank of Topeka .....	75,000
O. J. Wood, Attorney Santa Fe Ry. ....	40,000
W. B. Collinson, Chf. Clerk, Gen. Mgr., Santa Fe. ....	15,000
H. B. Lautz, Ass't Gen. Mgr. Santa Fe .....	25,000
E. L. Copeland, Sec.-Treas. Santa Fe R'l'd. ....	75,000
1091 S. G. Stewart, Physician .....	40,000
John S. Dawson, Attorney General of State. ....	25,000
J. B. Larimer, Lawyer .....	30,000
T. A. Borman, Publisher (Former Pr. Continental) ..	30,000
J. B. Doneyson, Ass't Sec'y Scottish Rite Bodies .....	15,000
L. L. Kiene, Sheriff (County) .....	15,000
W. W. Mills, Merchant (Dry Goods) .....	300,000
H. W. Bomgardner, Undertaker .....	15,000
Frank B. Parker, Life Insurance .....	15,000
L. F. Garlinghouse, Realty .....	30,000
E. B. Whitmore, " & Treas. Knights & L. of Security .....	35,000
J. S. West, Justice Supreme Court of State .....	30,000

Omer D. Smith, Steno. and Clerk "	2,000
Z. G. Hopkins, State Labor Commissioner.....	15,000
Geo. W. Bainter, Secretary Masonic Lodge #51.....	15,000
Egbert L. Whitney, Chief Operator Rock Island Office..	15,000
C. W. Hanchette, Manager Woolworth's 5 & 10c. store..	40,000
Arthur J. Carruth, Jr., Reporter State Journal.....	7,000
Glenn M. Bryan, Chf. Clk. Eng. Dpt. Santa Fe.....	2,000
Geo. W. McClelland, Grocer.....	6,000
F. O. Burket, Dentist.....	30,000
J. A. Steinmeyer, Dentist.....	75,000
Geo. M. Crawford, Publisher.....	50,000
J. L. Vincent, Clerk Capper Publications.....	6,000
W. E. Stevens, " Gas Co.....	2,000
J. L. Work, Physician.....	10,000
C. M. Lawrence, Manager Wold Packing Co.....	20,000
Geo. H. Hoyes, Sec'y Y. M. C. A.....	50,000
S. G. Zimmerman, Aud. Capper Publications.....	25,000
	<hr/>
	\$2,257,000.00

I expect to complete this list to fifty names.

G. S. B.

1092

EXHIBIT No. 32.

The Badders Company,  
Seventh and Kansas Avenue.

TOPEKA, KANSAS, December Twenty-second,  
Nineteen Hundred Thirteen.

Stein-Bloch Company, Rochester, N. Y.

GENTLEMEN: Inclosed find remittance for \$3,366.81 in accordance with our recent agreement.

Please advise us what discount you will give us if we sent you remittance in full on all past due items and Fall 1913 items if paid January 1st.

Yours very truly,

THE BADDERS COMPANY,  
By GEO. S. BADDERS.

G. S. B.—B.

(Stamped:) Rec'd Dec. 26, 1913. The S. B. Co.)  
(No enclosure.)

## EXHIBIT No. 34.

TOPEKA, KANSAS, December 29th, 1913.

The German American State Bank.

Pay to the order of Stein-Bloch Company, \$3,366.81 Thirty three Hundred Sixty six 81/100 Dollars.

THE BADDERS COMPANY,  
By GEO. S. BADDERS, *Pres.*

Not over thirty five hundred dollars.

Duplicate.

Deposits in this bank are guaranteed by the Bank Depositors' Guaranty Fund of the State of Kansas.

## EXHIBIT No. 35.

*Contract.*

TOPEKA, KANSAS, Nov. 8, 1913.

Whereas, The Badders Clothing Company of Topeka, 1093 Kansas, a corporation, is indebted to The Stein-Bloch Company of Rochester, New York, a corporation, at this date upon past due account in the sum of ten thousand five hundred eighty-one dollars and sixty-eight cents with interest at six per cent thereon from average due date of invoice; and,

Whereas, George S. Badders is indebted to The Stein-Bloch Company upon certain promissory notes due September 19, 1913, with interest, and which said indebtedness does not include one other note for twenty-five hundred dollars signed by him and secured by the indorsement of I. J. Frankenstein of Hillsdale, Michigan, the said George S. Badders' notes being also secured by the deposit of stock in The Badders Clothing Company as collateral; and,

Whereas, said The Badders Clothing Company is also indebted to The Stein-Bloch Company for goods shipped for the Fall of 1913, in a total amount of approximately two thousand dollars; and,

Whereas, the said The Badders Clothing Company and George S. Badders are desirous of extending the time of the payment of the said past due merchandise account and the said promissory notes due September 19, 1913, and The Stein-Bloch Company is willing to consent to the extension of said items upon the terms herein stated;

Now, therefore, it is hereby agreed by and between the said parties, for and in consideration of the payment of the sum of one dollar, and other good and valuable considerations, part of which are herein recited, and the receipt of all of which are hereby acknowledged by the said The Badders Clothing Company and George S. Badders, that the said The Badders Clothing Company will pay the Spring, 1913, invoices and the Fall 1913 invoices due The Stein-Bloch Company in full within the following period and in the following manner:

Twenty-five hundred dollars to be paid on or before November 15th, 1913, and the balance thereof of three thousand and three hundred sixty-six dollars and eighty-one cents, to be paid on 1094 or before December 20, 1913. If such payments are made on or before said dates, thereupon The Stein-Bloch Company will agree that they will accept, and The Badders Clothing Company hereby agree that they will pay, not less than five hundred dollars per month, payable on the first day of each month, until the full amount of the past due indebtedness to The Stein-Bloch Company is paid in full, the first payment of five hundred dollars to be made January 15th 1914. The said George S. Badders also agrees that he will continue to make payments from this date on as heretofore, of one hundred dollars per month upon his said notes to The Stein-Bloch Company, due September 19th, 1913, until the same, with interest, are paid in full.

It is further agreed by The Badders Clothing Company that the present status of the store lease and the store building at the street number 701 and 703, Kansas Avenue, Topeka, Kansas, is not to be changed, or said lease assigned, or any portion of the said lease or the property therein described sub-let, or said lease sold or transferred without the written consent of The Stein-Bloch Company first obtained.

The Badders Clothing Company further agree that the new goods shipped them, from this date forth, by The Stein-Bloch Company shall be paid for on terms of nine per cent off for cash at the end of the month.

If the Badders Clothing Company or George S. Badders shall make default in any manner of the payments hereinbefore provided to be paid by them, or either of them, on the date or at the place when the same is due and payable, as herein provided, thereupon all of the indebtedness herein extended and covered by the terms of this agreement shall at once become due and payable from the said The Badders Clothing Company and George S. Badders at the option of said The Stein-Bloch Company without notice or demand and the extension of time of payment herein provided for shall thereby terminate and all of the accounts herein provided 1095 for shall at once become due and payable, with interest thereon to such date.

In witness whereof the parties have hereunto set their hands the day and year first above written.

THE BADDERS CLOTHING CO.,  
By GEO. S. BADDERS, *President*.  
GEO. S. BADDERS.  
THE STEIN-BLOCH COMPANY,  
By LOUIS N. STEIN, *President*.

Attest:

THE STEIN-BLOCH CO.,  
By SIMON N. STEIN, *Secretary*.

[Seal of the Badders Clothing Company, Topeka, Kansas.]

[Seal of the Stein-Bloch Company, Incorporated, Rochester, N. Y.]

## EXHIBIT No. 36.

Postal Telegraph Commercial Cables. Postal Telegraph System.  
Clarence H. Mackay, President.

*Telegram.*

Registered Trade Mark, Design Patent No. 36369. The Postal Telegraph-Cable Company (Incorporated) transmits and delivers this message subject to the terms and conditions printed on the back of this blank.

Counter Number 37 Time filed 845 Check Chg. Badders 48 Rush Send the following message, without repeating, subject to the terms and conditions printed on the back hereof, which are hereby agreed to.

12-2-13.

(H. D. E.)

To S. R. Boyd, Brevort Hotel, Chicago, Ill.:

Your letter. Purchase all right. Don't be afraid to buy. If you think advisable return by St. Louis and purchase at Ely Walker's. I wired you at Rosenwald & Weil. Keep me advised by wire of your whereabouts and get home Thursday night if possible. Can use your wife.

GEORGE S. BADDERS.

4 K S O K 8 4 8 a.

1096

## EXHIBIT No. 37.

Postal Telegraph Commercial Cables. Postal Telegraph System.

Clarence H. Mackay, President.

*Telegram.*

Registered Trade Mark. Design Patent No. 36369.

The Postal Telegraph Cable Company (Incorporated) transmits and delivers this message subject to the terms and conditions printed on the back hereof, which are hereby agreed to.

Time filed 640 M. 12-1-13 Check Chg. Badders 52 3xa.

To Mr. Boyd or Mr. Badders, Care Rosenwald & Weil, Chicago, Ill.:

See Whitney Christensen also on suits. I have wired them we could use sixty or seventy five. Better see Calumet on some shirts and Cowen or Cutter & Crosette on neckwear. We need a bunch of fifteen and twenty five cent handkerchiefs also. You can buy three hundred suits.

GEORGE S. BADDERS.

501 K S F R A D. Night Letter. 918 p.

## EXHIBIT No. 38.

Bradstreet's, Room 403, Postal Telegraph Building, Kansas City, M

Date, Nov. 28, 1913.

*Statement Made by G. S. Badders.*

Corporate style Badders Clo. Co.

Name of city or Village Topeka.

County Shawnee.

Street and number 701-3 Kans., State Kansas.

## Officers.

Full given and sur names. Residence.

President, Geo. S. Badders, Topeka.

Vice President, W. A. Byers, "

Secretary, Ira W. Burdick, "

Treasurer, " "

Manager, Geo. S. Badders, "

## Directors.

Geo. S. Badders, Topeka.

1097

Full given and sur names. Residence.

Ira W. Burdick, "

Robert Stone, "

R. B. Badders, "

## Capital.

Authorized \$60,000.

Paid in \$60,000.

## Assets.

Cash on hand and in bank .....	2,000.00
Bills Receivable (notes) .....	25,000.00
Accounts receivable .....	11,000.00
Merchandise & Fixtures .....	53,000.00
Total Assets .....	91,000.00

## Liabilities.

Bills payable .....	6,000.00
Accounts payable .....	29,000.00
Total Liabilities .....	35,000.00

Bank with Bank of Topeka.

Sign here. Unsigned.

## EXHIBIT No. 39.

## Ledger.

## EXHIBIT No. 40.

## Daily Voucher Sheet.

	Date, Jan'y 1, 1914.	
	Express freight.	Expense.
The Stein-Bloch Co.....	11,479.43	
Fried Bros. ....	34.50	
Pioneer Susp. Co.....	285.71	
A. W. Cowan & Bros.....	350.88	
J. B. Stetson Co.....	65.22	
Hirschberg & Co.....	516.32	
Kling Bros. & Co.....	956.54	
1098		
Goldwater & Co.....	955.50	
J. Samuels & Bro.....	140.00	
Calumet Shirt Co.....	1,051.51	
Demster & Place.....	714.87	
Samuel Mundheim Co.....	442.33	
Able & Boch Co.....	133.64	
Cohen, Goldman Co.....	538.00	
Kohn Bros. ....	1,434.63	
L. F. Dominich & Co.....	366.65	
J. Werner & Co.....	239.30	
Robt. Kamber Co.....	1,187.60	
Rose Bros. ....	469.22	



Cluett, Peabody Co.....	.....	2,109.78
Kohn Bros. & Co.....	.....	454.83
Phenix Knit Wks.....	.....	514.49
A. Decker & Cohn.....	.....	1,986.95
Davis Mer. Co.....	.....	611.30
Burnham, Munger & R.....	.....	2,202.10
Rosenwald & Weil.....	.....	269.00
Adelson Bros. ....	.....	44.00
Total .....	.....	\$29,507.30
Rothschild Bros. Hat Co.....	.....	691.82
Sweet, Orr & Co.....	.....	437.01
McGraw Benjamin Hays.....	.....	219.50
Abe Bauman .....	.....	13.
Levy & Rosenthal.....	.....	21.
Detroit All. Co.....	.....	7.17
Nathan Tines & Bros.....	.....	635.50
R. Goldstein & Co.....	.....	773.50
Ferguson, McKinsly D. G. Co.....	.....	637.
Leopold, Solomon & Co.....	.....	1,562.
H. Kamber & Co.....	.....	211.
S. A. Rider Jewelry Co.....	.....	18.50
H. B. Glover Co.....	.....	59.24
Revere Rubber Co.....	.....	468.
Glick Bros. ....	.....	349.75
Schwab Clo. Co.....	.....	418.
The Epstein C. Duglis Co.....	.....	881.50

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Franklin Hat Co.....	33.	33.	
W. O. Horn & Bro.....	166.01	166.01	
Vindex Shirt Co.....	106.92	106.92	
Marinett Knitting Mills.....	41.25	41.25	
Lauerman Bros. ....	314.50	314.50	
Morris Vogel & Bros.....	39.	39.	
Fay, Gorman Co.....	108.	108.	
Royal Ascot Knit Mills.....	59.63	59.63	
J. Goldberg .....	100.25	100.25	
J. B. Murphy Co.....	91.50	91.50	
<b>Total .....</b>			<b>\$8,208.01</b>
Rice-Stix D. G. Co.....		1,094.94	
Rosenwald & Wringfinger.....		115.50	
Gotham Mfg. Co.....		799.64	
Washington Woolen Mill Co.....		257.63	
Cheney Bros. ....		78.99	
Eagle Waterproof Co.....		4.00	
Imperial Und. Co.....		325.35	
Donigar Bros. ....		394.50	
W. C. Kehrer.....		99.00	
Belber Trunk Co.....		230.90	
Eli Ulamperl.....		99.75	
Ely, Walker D. G. Co.....		48.	
Empire Cap Mfg. Co.....		306.25	
Sweet, Ore & Co.....		291.45	
Bill & Caldwell.....		304.25	
Weingarten & Giberlr.....		202.45	

H. C. Cohn & Co.....	.....	.....	555.79
Burger & Schwartz.....	.....	.....	121.57
Goodnough, Brookfield, K. C. (Red ink)	.....	.....	.....
Louis Auerbach .....	.....	.....	85.05
The Bracken Co.....	.....	.....	165.18
Hargadine, McK. Co.....	.....	.....	198.50
Edward Levy & Co.....	.....	.....	320.67
Lindahs, Lavick Co.....	.....	.....	190.47
W. M. Updike & Co.....	.....	.....	59.25
Sanders D. & G. Co.....	.....	.....	600.50
1100	.....	.....	.....
Total .....	.....	.....	6,466.54
Guyer Hat Co.....	.....	.....	292.
Searl Mfg. Co.....	.....	.....	805.94
Fear & White.....	.....	.....	215.50
Rosenberg Bros. ....	.....	.....	82.50
Bernstein Bros. ....	.....	.....	37.50
Star Fur. Mfg. Co.....	.....	.....	290.38
Chas. Eisman Co.....	.....	.....	223.50
Schwartz & Jaffee.....	.....	.....	347.28
New Era Mfg. Co.....	.....	.....	314.
Ture Shape Mfg. Co.....	.....	.....	222.40
Chas. Asjuder Mfg. Co.....	.....	.....	169.13
Bordenhiner Hygiene Und. Co.....	.....	.....	36.
Michael Stern Co.....	.....	.....	1,258.
Trunbel Hat Co.....	.....	.....	144.
National Rain Coat Co.....	.....	.....	360.
Indian Novelty Co.....	.....	.....	23.42

Rabichion, Peckham Co.....	.....	.....	180.
Orenstein, Rice Co.....	.....	.....	317.94
F. Leineold & Co.....	.....	.....	31.50
J. R. Kaiser.....	.....	.....	187.39
Baird, Untiedt Co.....	.....	.....	162.
Wear Well Hosiery Co.....	.....	.....	66.
C. M. Hedden Co.....	.....	.....	90.
Hartman Trunk Co.....	.....	.....	23.
Smith, McCord D. G. Co.....	.....	.....	253.94
Mortz, Lath & Co.....	.....	.....	94.50
Gloversville Auto Glove Co.....	.....	.....	83.93
<b>Total</b> .....	.....	.....	<b>6,311.75</b>
Mohler, Allenberg Co.....	.....	.....	144.50
Heidelberg, Wolff & Co.....	.....	.....	131.50
Altman Neckwear Co.....	.....	.....	76.50
Cutler & Crossett.....	.....	.....	130.80
Union Spec. All. Co.....	.....	.....	84.
Topeka Tent & Awning Co.....	.....	.....	[5.80]*
Topeka Woolen Mill Co.....	.....	.....	118.38
M. C. Lilly Co.....	.....	.....	117.20
Milwaukee Glo. Co.....	.....	.....	43.50
1101			
Paris Belt & Nov. Co.....	.....	.....	83.38
Shaw Knitting Co.....	.....	.....	189.90
Williams Bros. ....	.....	.....	21.

[\*Erased in copy.]

S. Dresner & Sons.....	46.	
Progressive Knit Works.....	634.25	
Buster Brown Hosiery Co.....	132.23	
The Parmenter Co.....	54.	
Maurice Lesser & Co.....	270.	
Geo. P. Ide Co.....	36.30	
Goodyear Rubber Co.....	322.61	
Berliner, Strauss & Meyer.....	754.17	
J. & M. Wolff.....	249.	
Globe Knitting Works.....	150.50	
Levy & Marcus.....	131.91	
Felsenthal Bros. & Co.....	37.01	
Frank Bros. & Co.....	90.	
Nickle Plate Suit Hgr. Co.....	48.	
Fisher & Deitkins.....	150.25	
Total .....	4,246.89	
The Adamson Co.....	15.37	
National Fur & Tanning Co.....	62.	
Brandt & Shipman.....	85.50	
Michigan Knitting Co.....	86.	
Junika Fur Coat Co.....	475.	
Vassar Swiss Und. Co.....	48.	
Suplee, Revere, Whiting Co.....	145.80	
Marks, Haas Clo. Co.....	579.	
Conrad B. Shane Co.....	484.50	
Union Raincoat Co.....	153.	
United States Raincoat Co.....	476.50	
The Feder, Shilberger Co.....	427.50	

M. Glickman Co.....	.....	.....	260.
Oshkosh All. Co.....	.....	.....	5.66
A. K. Wonder Hat Co.....	.....	.....	15.
Schwartz Bros. ....	.....	.....	666.50
Lipps Bros. ....	.....	.....	1,740.75
Ch'go Rubber Clo. Co.....	.....	.....	275.

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Nedwill, Taylor Co.....	.....	.....	247.50
C. S. Harrison Co.....	.....	.....	80.
Jacobs & Harris.....	.....	.....	314.50
Sol. Newman .....	.....	.....	24.75
Grauent & Rothschild.....	.....	.....	1,467.
J. Grossman .....	.....	.....	133.
A. Dinkelspeil & Co.....	.....	.....	621.
Kromberg Bros. ....	.....	.....	121.
L. Black & Co.....	.....	.....	873.

Total ..... 9,882.83

Rosenberg Bros. Co.....	.....	.....	540.05
Sloan Bros. & Co.....	.....	.....	221.
Solomon Bros. & Lempert.....	.....	.....	1,104.
Whitney, Christensen & Co.....	.....	.....	1,710.
Curlee Clo. Co.....	.....	.....	308.50
Steiner & Son.....	.....	.....	30.
Geo. W. Perry.....	.....	.....	247.95

50—521

H. Herzog .....	.....	180.	
Omaha Rubber Co. ....	.....	211.50	
(561125)			
L. L. O. System .....	.....	29.50	
Cohen & Lang .....	.....	862.50	
Washington Rain Coat Co. ....	.....	166.25	
		<hr/>	<hr/>
		70,781.98	12
		70,436.57	

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## EXHIBIT No. 41.

Stein-Bloch Smart Clothes.

George S. Badders, President.  
Seward R. Graham, Sec. Treas.

The Badders Company,  
Seventh and Kansas Avenue, Topeka, Kansas.

December third, Nineteen Hundred Thirteen.

GENTLEMEN: For your information we wish to advise you that our store will be closed until Friday when we start a very sensational sale, in fact our first advertisement will probably be headed "On the verge of Bankruptcy".

We wished to advise you of this as you will undoubtedly hear of our sale through the trade journals. Dun and Bradstreet are familiar with details.

Yours very truly,

THE BADDERS COMPANY,  
By GEO. S. BADDERS.

G. S. B.—B.

## EXHIBIT No. 42.

*Freight Bill.*

Form 1875 (Santa Fe Trade Mark)

TOPEKA, KANS., 1/28/14/R.

Consignee  
Badders Co.

Topeka Transfer & Storage Co.  
No. 4653

Freight  
Bill No. 5405.

To The Atchison, Topeka &amp; Santa Fe Railway Co., Dr.

Way Bill

Car

From Original point ship-  
ment and Consignor

Date	Number and Series	Initial	Number	
1/27	29105	AT	8128	K C Mo ABC Fireproof S. Co.

For Freight and Charges on Weight Rate Freight Advance Total

1 Bx	Clothing	525	1	
1 Bx	Do	250	2	
1 Bx	Do	80	3	
1 Do	Do	375	4	
1 Do	Do	360	5	
1 Do	Do	600	6	
1 Do	Do	100	7	
1 Do	Do	275	8	UBLACT 2565 29 743

743



1104 A T S F Fully REL

(Stamped:) Rec'e Payment Jan. 31, 1914 Geo. Sorensen, Agt.  
The A. T. & S. F. Ry. Co., Topeka, Kansas.

## EXHIBIT No. 43.

*Freight Bill.*

Form 1875 Regular (Santa Fe Trade Mark).

TOPEKA, KANSAS, 1/29/14/R.

Consignee  
Badders Co.

Topeka Transfers & Storage Co. Freight  
No. 4598 Bill No. 5662

To The Atchison, Topeka &amp; Santa Fe Railway Co., Dr.

Way Bill	Car	From	Original point ship- ment and consignor.
----------	-----	------	---

Date	Number and Series	Initials	Number	
1/28	30476	AT	48026	K. C. Mo. Globe, S. C.

For Freight and Charges on Weight Rate Freight Advances Total

1 Bx Clothing	300	1	(Written on bill in blue pencil*	
1 Do Do	260	2	Paid us.	
1 Do Do	520	3		
1 Do Do	380	4		
1 Do Do	240	5		
1 Do Do	280	6	UBLACT	1980 29 577
A T & S F Fully Rel				Switching
				574
				103
				<hr/> 674

(Stamped:) Rec'd Payment Jan. 30 1914 Geo. Sorensen, Agt.  
The A. T. & S. F. Ry. Co.

## EXHIBIT No. 44.

*Notice.*

To the Badders Clothing Company:

You are hereby notified to quit in ten (10) days from this date the room on the first floor, and the front basement, of the Security Building located at Nos. 701 and 703 Kansas Avenue, in the City of Topeka, Shawnee County, Kansas, which you occupy as tenant of the undersigned, for the non-payment of rent for the months of Octo-

ber, November, and December, 1913, and for the month of January, 1914, amounting to the sum of Two Thousand Dollars, (\$2,000.00).

You are further notified that unless you quit said building and premises in ten (10) days from the date hereof, suit will be brought to eject you.

1105 Dated at Topeka, Kansas, January 23, 1914.

NATIONAL COUNCIL KNIGHTS AND  
LADIES OF SECURITY (*Landlord*),  
By W. B. KIRKPATRICK,

*National President.*

Attest:

[Seal National Council Knights and Ladies of Security.]

J. V. ABRAHAM,

*National Secretary.*

TOPEKA, KANSAS, Jan. 23, 1914—5 p. m.

Copy of this document delivered to clerk in cashier's department of the store room of The Badders Clothing Co. the hour and date above set forth.

W. B. KIRKPATRICK,

*Nat. Pres. K. & L. of S.*

EXHIBIT No. 45.

*Rent Proposition to Geo. Badders.*

TOPEKA, KANSAS, January 21st, 1914.

We are willing to continue old lease to end of term as it now is, or make new lease to same effect in either case to responsible party, satisfactory to us on payment of the sum of Two Thousand (\$2,000.00) Dollars back due rent. If the privilege of sub-letting any portion of the room is desired, with our consent, rent will be Five Hundred Fifty (\$550.00) Dollars per month upon the taking effect of the sub-lease.

This proposition must be accepted by Thursday next 4 P. M. If we receive no notice of acceptance, we will understand that it is declined.

W. B. KIRKPATRICK,

*National President.*

Attest:

J. V. ABRAHAM,

*National Secretary.*

## EXHIBIT No. 47.

Stein-Bloch Smart Clothes.

George S. Badders, President.  
Seward R. Graham, Sec. Treas.

The Badders Company,  
Seventh and Kansas Avenue, Topeka, Kansas.

1106

August eighth, Nineteen Hundred Thirteen.

Alfred Decker &amp; Cohn, Chicago, Ill.

GENTLEMEN: Replying to your inquiry of the sixth instant we beg to advise you that Mr. Graham holds \$2500 of the Capital stock of The Badders Company at this time. From your letter we take it that possibly you do not understand that we are incorporated. Mr. Graham did not buy on an inventory. He simply purchased a portion of Mr. Frankenstein's stock in the Company and succeeded Mr. Frankenstein on the Board of Directors and as Secretary-Treasurer of the Company. Your letter has been forwarded to Mr. Graham and you may hear from him regarding the matter.

Yours very truly,

THE BADDERS COMPANY,  
By GEO. S. BADDERS.

Above letter missent.

Remailed 8/25/13.

BADDERS CO.

## EXHIBIT No. 48.

Stein-Bloch Smart Clothes.

George S. Badders, President.  
Seward R. Graham, Sec. Treas.

The Badders Company,  
Seventh and Kansas Avenue, Topeka, Kansas.

September third, Nineteen Hundred Thirteen.

Alfred Decker &amp; Cohn, Chicago, Ill.

GENTLEMEN: Your letter of August 29th has been placed on Mr. Graham's desk for reply. If Mr. Graham does not reach Topeka within a day or two, as we expect him to, our Mr. Badders will reply to your communication.

Yours very truly,

1107

THE BADDERS COMPANY,  
By GEO. S. BADDERS.

G. S. B.—B.

## EXHIBIT No. 49.

The Badders Company,  
Seventh and Kansas Avenue, Topeka, Kansas.

December twenty second, Nineteen Hundred Thirteen.

Alfred Decker & Cohn, Chicago, Ill.

GENTLEMEN: Your favor of the twentieth is at hand. We have a conscientious scruple against paying drafts, and have had only three drawn on us during our business experience, and therefore returned draft presented today. Check will go forward tomorrow or Wednesday in accordance with promise of our Mr. Badders when in Chicago.

Yours very truly,

THE BADDERS COMPANY,  
By GEO. S. BADDERS.

G. S. B.—B.

## EXHIBIT No. 50.

Stein-Bloch Smart Clothes.

George S. Badders, President.  
Seward R. Graham, Sec. Treas.

The Badders Company,  
Seventh and Kansas Avenue, Topeka, Kansas.

December third, Nineteen Hundred Thirteen.

GENTLEMEN: For your information we wish to advise you that our store will be closed until Friday when we start a very sensational sale, in fact our first advertisement will probably be headed  
1108 "On the verge of Bankruptcy".

We wished to advise you of this as you will undoubtedly hear of our sale through the trade journals. Dun and Bradstreet are familiar with details.

Yours very truly,

THE BADDERS COMPANY,  
By GEO. S. BADDERS.

G. S. B.—B.

## EXHIBIT No. 51.

David Bowie, President.  
E. L. Copeland, Vice President.  
J. R. Sargent, Treasurer.  
C. E. Eldridge, Recording Secy.  
Geo. H. Hoyes, General Secy.

## Departments:

Central, Ninth and Quincy.  
 Railroad opposite A. T. S. F. Depot.  
 Student, Washburn College.  
 Law School, 725 Kansas Ave.  
 Colored, 406 Kansas Ave.

The Central Young Men's Christian Association  
 Of Topeka, Kansas.

Phones 3907-3908.

December 24th, 1913.

DEAR AL: I guess I wrote you at the time I took stock in the Badders Clothing Company the amount of stock I bought. Also if I remember correctly I wrote why I took the stock, namely: to secure as I supposed a good account in Topeka. I had \$2500 in stock. I figured this way. Even if the stock didn't make any money I could sell him enough goods in a few years to get this money all back and interest. After being there ninety days I realized he was in bad shape. He was top heavy on expense and as Stein-Bloch had loaded him to the guards on high priced goods and he was owing them a good deal of money I felt I was connected with a sinking ship, and I went to Mr. Badders and told him just what I have written you here. It was a current report among traveling men that I had a controlling interest as I had been directing to a certain extent the policy of the store and when the inquiries as to the financial condition of the Badders Company came I felt that with the small interest I had in the Company didn't care to have my credit impaired in any way so I asked Mr. Badders to buy my stock as I was the  
 1109 innocent party in this deal and he bought my stock giving me his 120 day note for the same but asked me to say nothing about this until after the first of the year as he was going to try to reorganize his business. I had sold him goods from Michael-Stern & Co. and had also told them at the time I took the stock why I was taking it and when I sold out to Mr. Badders I said to him that inasmuch as I was a stockholder in the concern no matter what happened I wanted Michaels-Stern paid in full and he agreed to do this verbally and I know it will be taken care of as he is a mason and on the square. Now he is in deep water and I don't believe will be able to pull through. He feels very kindly towards you and your line of goods and I have told him the story in full of the history of your business, my connection with the same, etc. and that you also were one of the few of my real friends in life and I feel sure from what Mr. Badders said to me when I sold him my stock that he intends to continue your line of goods after his reorganization and also that he intends to pay your account in full. I give you this information in confidence as I felt it was due you from my hands.

With the season's best wishes, I am,

Yours very truly,

SEWARD R. GRAHAM.

## EXHIBIT No. 52.

The Badders Company,  
Seventh and Kansas Avenue, Topeka, Kansas.

January Fifteenth, Nineteen Hundred Fourteen.

Attention Mr. Decker:

Alfred Decker & Cohn, Chicago, Ill.

GENTLEMEN: Your wire of the 14th inst. "Have been worrying about our account owing to the many rumors prevailing on the other hand I have before me your wire promising upon your honor as man to man and which I look upon as being as good as the money received would like to get the money now urgently in need of it when can you send it?" came as a very great surprise to the writer. My wire you refer to was as follows: "Your wire date. Circumstances over which I have no control prevent remittance at this time. Delay on your part will not prejudice your rights in the matter. My word as man to man for this." Your construction of this as a promised payment, especially in view of what has transpired since the sending of this wire, is entirely erroneous. Although the wire does not promise payment, but only states that delay would not prejudice your rights, I will say that had you taken me at my word I would have been perfectly willing for you to have construed it into a personal promise of payment, and your account would have been paid by me personally? This would have been done because of your apparently very friendly attitude toward me personally during all our business transactions. That you did not consider my personal desire to see you paid is evidenced by your sending Mr. Spiesberger to Topeka after your receipt of the wire you refer to. And even after you sent Mr. Spiesberger to Topeka I told him I would personally guarantee the payment of your account and he in no uncertain terms unequivocally and unhesitatingly refused to accept my personal promise and he even went so far as to reply in response to my expression of friendliness to you personally at our parting in hotel that the same feeling did not exist between himself and I. It is true that he tried to smooth over the extremely rough way he tried to handle me in hotel by calling with Mr. Wheeler at the store but one does not so soon forget the attitude he took toward my company and especially toward me personally and although he finally left me with his good wishes I have not forgotten the hotel talk, of which he can inform you more if he so desires. Furthermore your wire of December 29th (partly as follows) "please do so and spare us the unpleasantness of taking action" would indicate that you were entirely in accord with Mr. Spiesberger's treatment of the matter and would further indicate that you were not looking to me personally for payment.

I hesitate about mentioning Mr. Graham's name in this connection, because of the personal relation I understand exists be-

tween Mr. Graham and yourself, but perhaps it is pardonable for me to state that I asked Mr. Graham to convey to you the information that I expected to see Alfred Decker & Cohn paid and he showed me the letter he wrote doing this. Mr. Spiesberger first said no such letter had been received and later said he had it in his possession but that it was my personal statement only conveyed by a third party and he did not consider it as having any particular bearing on the case.

I might say at this time that I am glad that you did not consider this letter of Mr. Graham as being in any sense a guarantee of the account or even a binding personal statement of mine because the letter was written by Mr. Graham purely at my instance and request and after he had severed his connection with the Company and had absolutely no interest in it other than because of his and Mr. Decker's personal relations he asked me to do the right thing with them and because of Mr. Graham's request I attempted to go further with you than with any other creditor of the Badders Company and tried to show you that I wanted to personally guarantee payment of this account but you absolutely refused to accede to my desires and would not accept any personal assurance from me and it hardly behooves you now to even mention it, indeed I am, as stated, very much surprised at your presuming to make me believe you had placed any credence in my personal statement.

On account of the manner in which Mr. Spiesberger has handled this matter I do not feel that you have the slightest reason for looking to me personally for any kind of assurances at this time and I can only state that it is for your own good judgment to direct you as to your future attitude and procedure in the premises. I am of course very sorry that you could not have placed a little confidence and good faith in me, especially after our several conversations in

1112 which you should have gained a little knowledge as to my personal reliability and trustworthiness, but you as a business man must judge these things for yourself and time alone will advise you of your erroneous estimate of the writer.

In closing I wish to assure you that the above letter is a business communication and even now I have the most friendly feelings toward you personally, because deep down in my heart I do not feel that Mr. Spiesberger expressed the attitude of Alfred Decker as I have learned to know Mr. Decker, and I am sincere in the belief that before long you will have understood the situation here and our personal and business relations will be a bit closer than they have been before.

With kind personal regards, I am,

Yours very truly,

GEO. S. BADDERS,  
*For The Badders Company.*

G. S. B.—B.

## EXHIBIT No. 53.

The Badders Co., Topeka, Kansas.

November 23, 1913.

Mr. Badders personally reports that his purchases for the sale that he proposes to start, on or about December first, are as follows:

Chicago.	Nominal.	
Rochester.	A. Dinkelspiel Co.....	\$700.
	Goldwater .....	300.
	H. Hershberger & Co.....	560.
	Solomon Bros. ....	900.
	Rosenberg .....	1,100.
	L. Black & Co.....	480.
	Sloan & Levy.....	200.
New York.	Jacob Cohn & Co.....	180.
	Brosser Bros. ....	1,200.
	Liptz Bros. ....	2,000.
	Robt. Kamber .....	1,200.
1113	Spiro Michael Co.....	1,400.

Most of these goods were bought on thirty days' dating.

## EXHIBIT No. 54.

*Bona Fide Orders.*

McGraw, Benjamin & Hays.....	219.50
R. Goldstein & Co.....	773.50
A. Dinkelspiel .....	621.00
Sloan Levy & Co.....	221.00
Rosenberg Bros. & Co.....	540.05
Solomon Bros. & Lempert.....	1,050.00
" " ".....	54.00
L. Black Company.....	810.00
Hershberg & Co.....	516.32
Cohen & Lang (New York).....	862.50
Lipps Bros. ....	1,155.00
" " .....	781.75
J. Cohen Sons & Co.....	1,873.50
	<hr/>
	\$9,483.12

We have have  
 said you are re-ferred on these two.  
 We want the goods.

{ Spero Michael & Son. \$1,550.00	
{ Nipson System .....	1,200.00
Rob't Kamber .....	1,200.00
	<hr/>
	\$3,950.00

(We have not received in-voices for these.



## Cancellations:

Siegel, Miller & Co.....	\$1,774.50
A. Bauman .....	637.00
Levine & Cedar.....	2,048.50
Bashwitz Bros. & Co.....	1,224.50
Tobias, Greenthal & Mendelson.....	1,217.00
B. Rothblatt & Son.....	3,000.00
	<hr/>
	\$9,901.50

Nathan Trivers and Epstein—Chas. Douglas were called upon but cancellations were given at the time duplicates were furnished.

Stamped on Back: Rec'd Nov. 29, 1913. The S. B. Co.

## EXHIBIT No. 55.

1114 Postal Telegraph Cable Company.

*Night Lettergram.*

Received at 41 Mad St. E. Rochester, N. Y.  
Delivery Number 299.

ny 270 F 36 N. L.

TOPEKA, KANSAS, Nov. 26, '13.

Stein Bloch Co., Rochester, N. Y.:

Total purchases in Rochester and New York city nine thousand four hundred eighty three dollars total cancellations nine thousand nine hundred and one dollars a detailed itemized statement of all purchases and cancellations to you in today's mail.

THE BADDERS CO. 1115 p.

(Stamped:) Rec'd Nov. 28, 1913. The S. B. Co.

## EXHIBIT No. 56.

Stein-Bloch Smart Clothes.

George S. Badders, President.  
Seward R. Graham, Sec. Treas.

The Badders Company,  
Seventh and Kansas Avenue, Topeka, Kansas.

Copy.

November Twenty-eighth, Nineteen Hundred Thirteen.

Spero, Michael & Son, New York City.

GENTLEMEN: Your favor of the 25th is at hand. We wish you would consider this matter further and ship the goods as we need

them. We unfortunately looked at goods at too many places and when we narrowed our purchases to what we wanted all parties we had seen reported sales and this of course looked like we were buying a lot of goods. As a matter of fact we cancelled about \$12,000 in clothing from our fall purchases and now find ourselves short. We bought from the following houses only in New York City (all others were cancelled).

	Cohen & Lang.....	862.50
	Lipps Bros. ....	1,941.75
	J. Cohen Sons Co.....	1,873.50
1115	Robert Kamber .....	1,200.00
	Nipson System .....	1,200.00

All goods have been shipped with the possible exception of Nipson System whose invoice we have not received. We can use your merchandise and for that reason did not cancel it.

Will you not talk with Robert Kamber & Hoffman, J. Samuels & Bros. and call Stein-Bloch at Rochester on long distance if in any doubt as to our responsibility.

Yours very truly,

(Signed)

THE BADDERS COMPANY.  
G. S. B.

GENTLEMEN: The above for your information.

#### EXHIBIT No. 57.

I agree to purchase one share of stock in The Badders Clothing Company at \$100.00 (the par value of said stock) upon George S. Badders delivering to me with said stock a written agreement wherein he guarantees six per cent per annum upon said stock and agrees to repurchase same any time I want to resell, thirty days' notice being given to Badders.

[W. E. Stevens]*.....	Pd. 6/9/13 .....	..
J. L. Work.....	Note .....	1
C. M. Lawrence.....	Pd. 7/14 .....	2
[Geo. H. Hayes]*.....	.....	..
S. G. Zimmerman.....	Del. 6/6 .....	..
A. E. Billings.....	.....	3
F. W. Daugherty.....	.....	4
E. S. Pettijohn.....	.....	5
L. M. Penwell.....	Pd. 8/8/13 .....	6
F. B. Parker.....	Note .....	7
Robert Stone .....	Pd. ....	8
N. B. Burge.....	Note 6/2 .....	9
Edwin L. O'Neil.....	.....	..
C. A. Moore.....	Note .....	10
Arthur Capper.....	Pd. 5/21/13.....	11

[\* Words and figures enclosed in brackets erased in copy.]

1116

J. Will Kelley.....	Not Del.	12
L. W. Wilson.....	Not Del.	13
E. R. Simon.....	Note	14
C. B. Burge.....	Note	15
A. M. Newland.....	Note	16
H. L. Cook.....	Pd. 7/10	17
Scott Hopkins.....	Pd. 5/31/13	18
S. E. Cobb.....	Pd. 4/11/13	19
O. J. Wood.....	Pd. 6/6/13	20
W. B. Collinson.....	Pd. 6/6	21
H. B. Lautz.....	Pd. 6/6	22
E. L. Copeland.....	Pd. 6/2/13	23
S. G. Stewart.....	Not Del.	24
John S. Dawson.....	Not Del.	25
L. F. Garlinghouse.....	Not Del.	26
J. B. Larimer.....	Not Del.	..
T. A. Borman.....	Pd.	..
I. B. Doncyson.....	Note	..
L. L. Kiene.....	Pd. 50	..
W. W. Mills.....	Pd. 6/6	..
H. W. Bomgardner.....	Note	..
W. M. Forbes.....	Not Del.	..
C. B. Whitmore.....	Note 15 Pd. Pd.	..
J. S. West.....	Note	..
Omer S. Smith.....	Not Del.	..
Z. G. Hopkins.....	Note. Pr. 6/6	..
Geo. W. Bainter.....	Note	..
Egbert L. Whitney.....	Note	..
C. W. Hanchette.....	Pd. 5/31/13	..
Glenn M. Bryan.....	Not Del.	..
Geo. W. McClelland.....	Not Del.	..
[F. O. Burket]*.....	Pd. 5/31/13	..
J. D. Steinmeyer.....	Del. 5/21/13. Pd. 6/2	..
Geo. M. Crawford.....	Pd. 5/31/13	..
[H. L. Vincent]*.....		..

1117

EXHIBIT No. 58.

Western Union Night Letter.

Received at 89 Ch Z 91 NL

(Stamped.)

TOPEKA, KANS., 24.

Rec'd Dec. 26, 1913. The S. B. Co.

Stein Bloch Co., Roch., N. Y.:

Don't understand your request to McClintock for us to depart from a year's custom of sending you checks in settlement of amounts

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[\* Words and figures enclosed in brackets erased in copy.]

owing you we sent you November fifteen payment ahead of time and you have not complaint coming at present payment being few days late we will not pay an attorney this amount we have never paid any bills except in the regular way and cannot depart from our custom now please do not insist if McClintock carries out veiled threat and runs attachment you will precipitate bankruptcy be careful.

BADDERS COMPANY.

EXHIBIT No. 59.

Robinson Marshall & Co.,  
701, 703 Kansas Ave.

TOPEKA, KANSAS, November Fifteenth,  
Nineteen Hundred Eleven.

Geo. Guggenheim, Esq., Stein Bloch Company, Rochester, New York.

DEAR MR. GUGGENHEIM: I inclose a copy of a personal and business letter I have just written Ike about the Marshall store, this City. I expect you think I had my nerve to go ahead with the deal without wiring you but as a matter of fact the deal was finally closed only this evening. I can easily convince you I did the proper thing when I see you, which I trust will be shortly.

Will you kindly show this correspondence to Mr. Louis Stein and explain to him that I am all in, it now being 12:00 o'clock midnight and the day before the sale, and cannot write him. Give the Stein Brothers my very kind regards.

Sincerely yours,

G. S. B.

Please wire me.  
G. S. B.

1118

EXHIBIT No. 60.

Robinson Marshall & Co.,  
701, 703 Kansas Ave.

TOPEKA, KANSAS, November Seventeenth,  
Nineteen Hundred Eleven.

Geo. Guggenheim, Esq., Stein-Bloch Company, Rochester, New York.

DEAR MR. GUGGENHEIM: I am pleased to advise you that yesterday's business was \$3,521.26. We are extending no credit during this sale. I think there is no question but that we will take out Forty or Fifty Thousand Dollars' worth of the stock in the next thirty days. If it would be more agreeable to Ike, and I believe it would, to buy on an inventory taken after the sale this would be perfectly satisfactory to me.

I wish that you might come out here within the next few days and I will make a satisfactory arrangement with you for Ike to come into the business as an equal partner with me.

I will send you a wire Saturday night advising you the total business done the first three days of the sale.

Yours very truly,

John R. Mulvane has consented to serve on our Board of Directors and stand back of — financially for anything we need.

G. S. B.—B.

G. S. B.

EXHIBIT No. 61.

The Stein-Bloch Co., Wholesale Tailors.

Registered 1888.

This label marks the smartest ready-to-wear clothes.

ROCHESTER, N. Y., Nov. 20th, 1911.

1119 Mr. George Badders, Topeka, Kansas.

MY DEAR MR. BADDERS: All of your communications, wires and otherwise reached me in a bunch on Saturday morning. Your Special Delivery letter evidently was delayed enroute. I also heard from Mr. Frankenstein, to whom I have written to-day, and you will no doubt hear from him with reference to the subject.

There is one thing, it is utterly impossible for me to get away from Rochester during the balance of the month of November. We take inventory the last week of the month and I cannot get away under any circumstances until after inventory has been completed, and I am glad to note from your letters that this will not put you in any serious inconvenience and if Mr. Frankenstein decides to go in with you, matters pertaining to the deal can be taken up after that time. One thing I want to warn you and that is to keep the goods that you have down the cellar to the front and sell them if you can.

With regards, I remain,

Yours very truly,

GEO. C. GUGGENHEIM.

G.; G. M. H.

## EXHIBIT No. 62.

Stein-Bloch Smart Clothes.

The Stein Bloch Co., Wholesale Tailors.

Registered 1888.

This label marks the smartest ready to wear clothes.

ROCHESTER, N. Y., December 19, 1911.

MY DEAR MR. BADDERS: I have your letter of December 13th, which, owing to my absence from Rochester, could not have my attention until this time.

I have been wondering how your sale was progressing, as I have known nothing of the situation since Mr. Frankenstein left Topeka and had but one letter from him at the time that he was 1120 there. It seems to me that you have got to do some hustling to get your stock down to where it ought to be. If I remember correctly, it was your intention to sell about \$50,000 within the time limit. Every effort ought to be made to clean up your old stock before you will be in position to talk business to outside capital, and that cellar stock of yours requires good clean pruning. If you have not got rid of it, you ought to bring it out and sell it for the best price that you can get.

I notice from the papers that the Palace is after you good and hard. They are clean competition and want to be taken into consideration in every one of your moves. I know that you have the ability and you are probably getting good mercantile education. I think that by the first of February you will know lots about the clothing business.

Has Mr. Frankenstein communicated with you in any way since he left Topeka? Am glad to hear from you as I shall always be. I will probably be in Rochester, unless something unforeseen happens, until after the first of January.

With regards, I am,

Very truly yours,

GEO. C. GUGGENHEIM.

Mr. Geo. S. Badders, Marshall Clothing Co., Topeka, Kansas.

## EXHIBIT No. 63.

*Memorandum.*

The Capital stock of The Badders Clothing Company is to be increased Ten Thousand Dollars. Ten Thousand Dollars is to be paid Sæin-Bloch Company on their open account within ten days. Two notes for \$2,500 each payable in six months and one note for \$2,500 payable in one year are to be given by George S. Badders

to The Stein-Bloch Company. The one year note for \$2,500 is to be indorsed by I. J. Frankenstein. The notes are to be secured by 75 shares of stock in the Badders Clothing Company with the usual indorsement from George S. Badders. George S. Badders is to pay Stein-Bloch Company not less than \$100 per month to apply on above notes. Stein-Bloch Company are to ship season's goods with one season's payment still due from The Badders Company.

This memorandum is understood by and agreed to by the parties hereto.

GEO. S. BADDERS.  
I. J. FRANKENSTEIN.  
THE STEIN-BLOCH CO.,  
By GUGGENHEIM.

Feb. 5, 1913.

EXHIBIT No. 65.

December 31, 1913.

To the Badders Clothing Company and George S. Badders:

You and each of you are hereby notified that because the Badders Clothing Company has refused to pay the Stein-Bloch Company the sum of three thousand, three hundred sixty six dollars and eighty one cents (\$3,366.81), which was due and payable on December 20, 1913, and which is now past due, the Stein-Bloch Company does by virtue of a contract entered into with you, under date of November 8th, 1913, declare the entire indebtedness of the Badders Clothing Company to the Stein-Bloch Company, aggregating the sum of twelve thousand, one hundred thirty one dollars and forty seven cents (\$12,131.47) now due and payable, and does hereby make demand upon the Badders Clothing Company for immediate payment of the said sum.

And the Stein-Bloch Company does by reason of the further default in the payment of the sum of one hundred dollars (\$100.00) which was due and payable on December 1st, 1913, to it, from George S. Badders, and which payment is now past due, by virtue of the said contract, declare the entire sum payable by George S. Badders to the Stein-Bloch Company, which is described and provided for in said contract, and which aggregates the sum of four thousand, five hundred fourteen dollars and eleven cents (\$4,514.11), to be now due and payable, and does hereby make demand upon George S. Badders for immediate payment of said sum.

THE STEIN BLOCH CO.,  
By GEO. C. GUGGENHEIM,  
*General Manager.*

## EXHIBIT No. 66.

TOPEKA, KANSAS, December 31, 1913.

To the Badders Clothing Company, Geo. S. Badders, its President;  
Geo. S. Badders, and the Officers of the Badders Clothing Company:

The Stein Bloch Company, does hereby exhibit to The Badders Clothing Company and its officers stock certificates numbered 21 and 22, of The Badders Clothing Company for 25 and 50 shares of stock, respectively, issued March 31, 1913 to Geo. S. Badders and does further exhibit to the above named parties a transfer and assignment of said shares of stock, in writing, dated on March 31, 1913, by Geo. S. Badders to the Stein-Bloch Company. The Stein-Bloch Company hereby makes demand upon The Badders Clothing Company and upon its officers and the other parties named above that they transfer and cause to be transferred the said certificates of stock in the Badders Clothing Company on the stock register and other books of The Badders Clothing Company to the Stein-Bloch Company and to make said transfer of said certificates of stock show that the Stein-Bloch Company holds the said certificates of stock as collateral security of indebtedness due by Geo. S. Badders, individually to the Stein-Bloch Company.

THE STEIN BLOCH CO.,  
By GEO. C. GUGGENHEIM,  
*General Manager.*

## EXHIBIT No. 67.

Thursday, December 4, 1913. The Topeka Daily Capital.

On the Verge of Bankruptcy, The Badders' Clothing Co.,  
701-703 Kansas Avenue, Topeka, Kansas.

Entire stock of clothing, gent's furnishings, etc., now in the hands of J. L. Adler & Co., Credit Accountants to be sold for the purpose of raising \$40,000, which amount the Badders' Clothing Co. must raise in the next twenty days to satisfy the demands of their creditors.

Starting Friday morning, Dec. 5, at 8:30 a. m. the Credit Accountants will offer at Retail Sale the Entire Stock of The Badders' Clothing Co. at the Most Drastic Reductions Ever Attempted in Topeka on Men's, Young Men's and Children's Wearing Apparel of Such High Grade and Character. Store Closed Tuesday, Wednesday and Thursday for Appraisal and Inventory.

Doors open to the public tomorrow, Friday, December 5, at 8:30 a. m.

*Notice.*

The necessity of raising \$40,000 to satisfy demands of our creditors, make it necessary for us to kindly request all persons knowing



themselves indebted to us to please call and adjust their accounts at their very earliest convenience, and oblige

THE BADDERS CLOTHING CO.

We are on the verge of Bankruptcy and there's no use to hide under the bushel or beat around the bush. We owe \$40,000 and our creditors are demanding their money. They have given us 20 days' time to raise this large amount. We have felt the effects of a backward season, one of the most disastrous for many years. We bought heavily, in anticipation of our usual Fall and Winter business. Our trade has not been up to the average and we are not ashamed to take you into our confidence and tell you our true condition. No false pride with us. For the first time in the history of this corporation, we are in financial difficulties and are forced to throw our stock on the market at the mercy of the people to get relief—relief which only you can give and we must have to keep out of bankruptcy. We fully appreciate that to raise \$40,000, the amount we must have to pay what we owe, and now past due, we must sustain a tremendous loss, but — is far better to lose a few thousand dollars than  
1124 it is to lose our life's work, by having to go into bankruptcy.

Therefore, we are going to give you, our loyal friends and customers, the benefit of our misfortune.

THE BADDERS CLOTHING CO.

The Badders Clothing Co. has always conducted its business along the lines of honor and highest integrity; it has never indulged in fake sales or imposed on the confidence of the public and the Credit Accountant's sale to raise \$40,000 to satisfy demands of creditors will be conducted along the same honorable lines that has always characterized the dealings of this corporation. The people of Topeka and vicinity know that no finer merchandise is carried in any clothing store in any city than is to be found here; including the products of such well known clothing manufacturers as Stein Bloch Co., Society Brand Clothing—furnishings from the foremost manufacturers of high grade merchandise and which are now offered to you in the very height of season on the merciless price basis the Credit Accountants have been forced to adopt to speedily convert the stock into money to raise \$40,000 which The Badders Clothing Co. must have to satisfy the demands of creditors.

J. L. ADLER & CO.,

*Credit Accountants in Control.*

#### Men's and Young Men's Suits.

All \$15.00 Suits, Creditors' Price.....	\$9.25
All \$18.00   "       "       " .....	12.00
All \$20.00   "       "       " .....	14.00
All \$22.50   "       "       " .....	15.00
All \$25.00   "       "       " .....	16.25
All \$28.00   "       "       " .....	17.00
All \$30.00   "       "       " .....	18.25
All \$35.00   "       "       " .....	25.00

## Men's and Young Men's Overcoats and Raincoats.

All \$15.00	Men's Overcoats, Creditors' Price	\$9.25
All \$18.00	" " " "	12.00
All \$20.00	" " " "	14.00
All \$22.50	" " " "	15.00

1125

All \$25.00	Men's Overcoats, Creditors' Price	\$16.25
All \$28.00	" " " "	17.00
All \$20.00	" " " "	18.25
All \$30.00	" " " "	25.00

## Men's Pants.

All \$2.50	Men's Pants, Creditors' Price	\$1.65
All \$3.00	" " " "	1.85
All \$3.50	" " " "	2.25
All \$4.00	" " " "	2.65
All \$4.50	" " " "	3.15
All \$5.00	" " " "	3.65
All \$6.00	" " " "	4.25
All \$7.50	" " " "	5.25
All \$8.00	" " " "	5.65

## Children's Knickerbocker Suits.

All \$3.50	Suits, Creditors' Price	\$2.25
All \$4.00	" " " "	2.75
All \$4.50	" " " "	3.25
All \$5.00	" " " "	3.65
All \$6.00	" " " "	4.25
All \$6.50	" " " "	4.45
All \$7.00	" " " "	4.95
All \$7.50	" " " "	5.25
All \$8.50	" " " "	5.95
All \$10.00	" " " "	6.75

## Men's Hats.

All \$3.00	Hats, Creditors' Price	\$2.15
All \$3.50	Hats, Creditors' Price	2.45
All \$4.00	Hats, Creditors' Price	2.75
All \$5.00	Hats, Creditors' Price	3.00

## Boys' Overcoats.

All \$3.50	Coats, Creditors' Price	\$2.25
All \$4.00	Coats, Creditors' Price	2.75
All \$5.00	Overcoats, Creditors' Price	3.65
All \$6.50	Overcoats, Creditors' Price	4.45

	All \$7.50 Overcoats, Creditors' Price.....	5.25
1126	All \$8.50 Overcoats, Creditors' Price.....	5.95
	All \$10.00 Overcoats, Creditors' Price.....	6.75
	All \$12.50 Overcoats, Creditors' Price.....	7.95
	All \$15.00 Overcoats, Creditors' Price.....	9.25

## Furnishing Goods, Shirts.

	All \$1.00 Shirts, Creditors' Price.....	.65
	All \$1.50 Shirts, Creditors' Price.....	.95
	All \$2.00 Shirts, Creditors' Price.....	1.35
	All \$2.50 Shirts, Creditors' Price.....	1.65
	All \$3.00 Shirts, Creditors' Price.....	1.90
	All \$3.50 Shirts, Creditors' Price.....	2.50

## Underwear, Shirts, Drawers.

	All 50c Underwear, Creditors' Price.....	.35
	All 75c Underwear, Creditors' Price.....	.45
	All \$1.00 Underwear, Creditors' Price.....	.65
	All \$.25 Underwear, Creditors' Price.....	.85
	All \$1.50 Underwear, Creditors' Price.....	.95
	All \$2.00 Underwear, Creditors' Price.....	1.35
	All \$2.50 Underwear, Creditors' Price.....	1.65
	All \$3.00 Underwear, Creditors' Price.....	2.15
	All \$3.50 Underwear, Creditors' Price.....	2.65

## Men's Smoking Jackets.

All	\$5.00 Smoking Jackets, Creditors' Price.....	\$3.65
All	\$6.00 Smoking Jackets, Creditors' Price.....	4.35
All	\$7.50 Smoking Jackets, Creditors' Price.....	5.25
All	\$8.00 Smoking Jackets, Creditors' Price.....	5.65
All	\$10.00 Smoking Jackets, Creditors' Price.....	6.75
All	\$12.50 Smoking Jackets, Creditors' Price.....	7.95

## Men's Pajamas.

All	\$1.50 Pajamas, Creditors' Price.....	.95
All	\$2.00 Pajamas, Creditors' Price.....	1.35
All	\$2.50 Pajamas, Creditors' Price.....	1.65
All	\$3.00 Pajamas, Creditors' Price.....	2.15
All	\$3.50 Pajamas, Creditors' Price.....	2.45

1127

## Mufflers.

All	50c Mufflers, Creditors' Price.....	.35
All	\$1.00 Mufflers, Creditors' Price.....	.65
All	\$1.50 Mufflers, Creditors' Price.....	.95
All	\$2.00 Mufflers, Creditors' Price.....	1.35
All	\$3.00 Mufflers, Creditors' Price.....	2.15

## Underwear—Union Suits.

All \$1.00 Union Suits, Creditors' Price.....	.65
All \$1.50 Union Suits, Creditors' Price.....	.95
All \$2.00 Union Suits, Creditors' Price.....	1.35
All \$2.50 Union Suits, Creditors' Price.....	1.65
All \$3.00 Union Suits, Creditors' Price.....	2.15
All \$3.50 Union Suits, Creditors' Price.....	2.65
All \$4.00 Union Suits, Creditors' Price.....	3.15
All \$4.50 Union Suits, Creditors' Price.....	3.45
All \$5.00 Union Suits, Creditors' Price.....	3.65
All \$6.00 Union Suits, Creditors' Price.....	4.65

## Neckwear.

All 50c Neckwear, Creditors' Price.....	.35
All 75c Neckwear, Creditors' Price.....	.45
All \$1.00 Neckwear, Creditors' Price.....	.65
All \$1.25 Neckwear, Creditors' Price.....	.85
All \$1.50 Neckwear, Creditors' Price.....	.95

## Men's Half Hose.

All 15c Half Hose, Creditors' Price.....	.09
All 25c Half Hose, Creditors' Price.....	.15
All 50c Half Hose, Creditors' Price.....	.35
All 75c Half Hose, Creditors' Price.....	.45
All \$1.00 Half Hose, Creditors' Price.....	.65

## Suspenders.

All 50c Suspenders, Creditors' Price.....	.35
All \$1.00 Suspenders, Creditors' Price.....	.65

## Trunks, Suits Cases, Bags.

All \$1.25 Suit Cases, Creditors' Price.....	.85
All \$1.50 Suit Cases, Creditors' Price.....	.95
All \$2.00 Suit Cases, Creditors' Price.....	1.35
All \$3.50 Suit Cases, Creditors' Price.....	2.65
1128 All \$4.00 Suit Cases, Creditors' Price.....	\$3.15
All \$5.00 Suit Cases, Creditors' Price.....	3.65
All \$6.00 Trunks and Suit Cases, Creditors' Price.....	4.35
All \$8.00 Trunks and Suit Cases, Creditors' Price.....	5.65
All \$10 Trunks and Suit Cases, Creditors' Price.....	6.75
All \$11.00 Trunks, Creditors' Price.....	7.65
All \$12.00 Trunks, Creditors' Price.....	7.95
All \$13.50 Trunks, Creditors' Price.....	8.65
All \$15.00 Trunks, Creditors' Price.....	9.25
All \$16.50 Trunks, Creditors' Price.....	10.45
All \$18.00 Trunks, Creditors' Price.....	12.00
All \$22.50 Wardrobe Trunks.....	15.00

## Men's Caps.

All 50c Caps, Creditors' Price.....	.35
All \$1.00 Caps, Creditors' Price.....	.65
All \$1.50 Caps, Creditors' Price.....	.95

## Raincoats (Slip-ons).

All \$5.00 Raincoats, Creditors' Price.....	\$3.65
All \$6.50 Raincoats, Creditors' Price.....	4.65
All \$7.50 Raincoats, Creditors' Price.....	5.25
All \$8.50 Raincoats, Creditors' Price.....	5.95
All \$10.00 Raincoats, Creditors' Price.....	6.75

## Men's Bath Robes.

All \$5.00 Bath Robes, Creditors' Price.....	\$3.65
All \$6.00 Bath Robes, Creditors' Price.....	4.35
All \$7.50 Bath Robes, Creditors' Price.....	5.25
All \$8.00 Bath Robes, Creditors' Price.....	5.65
All \$10.00 Bath Robes, Creditors' Price.....	6.75
All \$12.50 Bath Robes, Creditors' Price.....	7.95

## Mackinaws.

All \$6.00 Mackinaws, Creditors' Price.....	4.35
All \$6.50 Mackinaws, Creditors' Price.....	4.65
All \$7.50 Mackinaws, Creditors' Price.....	5.25
All \$8.00 Mackinaws, Creditors' Price.....	5.65
All \$8.50 Mackinaws, Creditors' Price.....	5.95
All \$9.00 Mackinaws, Creditors' Price.....	6.35
All \$9.50 Mackinaws, Creditors' Price.....	6.55
All \$10.00 Mackinaws, Creditors' Price.....	6.75

1129

## Garters.

All 25c Garters, Creditors' Price.....	.15
All 50c Garters, Creditors' Price.....	.35

## Men's Sweaters.

All 50c Sweaters, Creditors' Price.....	.35
All \$1.50 Sweaters, Creditors' Price.....	.95
All \$2.00 Sweaters, Creditors' Price.....	1.35
All \$2.50 Sweaters, Creditors' Price.....	1.65
All \$3.00 Sweaters, Creditors' Price.....	2.15
All \$4.50 Sweaters, Creditors' Price.....	3.45
All \$5.00 Sweaters, Creditors' Price.....	3.65
All \$7.00 Sweaters, Creditors' Price.....	5.25
All \$8.50 Sweaters, Creditors' Price.....	5.95
All \$10.00 Sweaters, Creditors' Price.....	6.75

## Gloves—Dress Gloves, Fur Gloves, Auto Gloves, Work Gloves.

All \$1.00 Gloves, Creditors' Price.....	.65
All \$1.50 Gloves, Creditors' Price.....	.95
All \$2.00 Gloves, Creditors' Price.....	1.35
All \$2.50 Gloves, Creditors' Price.....	1.65
All \$3.00 Gloves, Creditors' Price.....	2.15
All \$3.50 Gloves, Creditors' Price.....	2.65
All \$4.00 Gloves, Creditors' Price.....	3.15
All \$5.00 Gloves, Creditors' Price.....	3.65
All \$6.00 Gloves, Creditors' Price.....	4.35

Positively no Goods charged during this sale.

The Credit Accountant's Sale of the Stock of the Badders' Clothing Co., 701-703 Kansas Avenue, Topeka, Kansas, To Satisfy demand of creditors Starts Friday, December 5, at 8:30 A. M.

J. L. ADLER & CO.,  
*Credit Accountants in Control.*

Wanted—25 Experienced Clothing Salesmen. 15 Experienced Sales Ladies. 3 Experienced Bundle Wrappers. 20 Cash Girls or Boys. Apply at once—side door.

1130

EXHIBIT No. 68.

Any Suit, Overcoat or Raincoat in Our Store Originally \$40, \$35, \$30, \$28, \$25, \$22.50, \$40, \$18, Now \$9.50 (Hand) \$9.50 (Hand) \$9.50.

It has come to this: Only seven days more to the time limit given by creditors to raise \$40,000 to satisfy their demands. The situation is desperate. We are not going to take any chances in not accomplishing the herculean task set for us of raising \$40,000 on or before Dec. 24th. We have yet a large sum of that amount to raise and only seven days more remain of the time limit given by the creditors to do so. We've made the most heroic sacrifice of our career. We are now compelled to make still greater sacrifice in our last frantic effort to prevent bankruptcy and to save our business. No sane human being can doubt the sincerity of our efforts; no fair minded person can doubt the truthfulness of our advertising. We've stated the facts in cold type and we are backing them up in a price-wrecking event which time will never erase. Every garment and every article in the store is being offered you for less than you would offer if you were asked to name your own price. Bear in mind the clothing we handle is all new, high grade, and purchased for this fall and winter trade—products of the leading and foremost manufacturers in the United States. No better clothing can be found in any store in Topeka than is to be found here. Each and every garment retains its original price tag with the selling price in plain figures—its actual value. No double marking.

Starting tomorrow (Thursday) morning, Dec. 18th, and continu-

ing from day to day until we have raised \$40,000 to satisfy creditors, we offer you—

\$9.50) Your Pick and Choice of Any \$40, \$35, \$30, \$28, \$25 (\$9.50 \$22.50, \$20, \$18, Suit, Overcoat or Raincoat in the Store. Nothing Reserved or Held Back. Black and Blues Included. No Alterations. No Exchanges. No Refunds. Nothing Charged.

½—Your Pick and Choice of any Pair of Pants in the Store for Half Price.

1131 Your pick and choice of our Most Complete, High Class Furnishing Stock Now Half Price.

#### Men's Half Hose:

15c Half Hose, now.....	.08
25c Half Hose, now.....	.13
50c Half Hose, now.....	.25
75c Half Hose, now.....	.38
\$1.00 Half Hose, now...	.50

#### Men's Sweaters:

50c Sweaters, now.....	.25
\$1.50 Sweaters, now.....	.75
\$2.00 Sweaters, now.....	1.00
\$2.50 Sweaters, now.....	1.25
\$3.00 Sweaters, now.....	1.50

#### Trunks, Suits Cases, Bags:

\$1.25 Suit cases, now....	.63
\$1.50 Suit Cases, now...	.75
\$2.00 Suit Cases, now...	1.00
\$3.50 Suit Cases, now...	1.75
\$4.00 Suit Cases, now...	2.00
\$5.00 Suit Cases, now....	2.50
\$6.00 Trunks and Cases...	3.00
\$8.00 Trunk- and Cases..	4.00
\$10.00 Trunks and Cases	5.00
\$11.00 Trunks, now.....	5.50
\$12.00 Trunks, now.....	6.00
\$13.50 Trunks, now.....	6.75
\$15.00 Trunks, now.....	7.50
\$16.50 Trunks, now.....	8.25
\$18.00 Trunks, now....	9.00
\$22.50 Wardrobe Trunks	11.25

#### Gloves—Dress      Gloves, Fur      Gloves, Auto Gloves, Work Gloves:

\$1.00 Gloves, now.....	.50
\$1.50 Gloves, now.....	.75
\$2.00 Gloves, now.....	\$1.00
\$2.50 Gloves, now.....	1.25
\$3.00 Gloves, now.....	1.50
\$3.50 Gloves, now.....	1.75
\$4.00 Gloves, now.....	2.00
\$5.00 Gloves, now.....	2.50
\$6.00 Gloves, now.....	3.00

#### Men's Hats:

\$3.00 Hats, now.....	1.50
\$3.50 Hats, now.....	1.75
\$4.00 Hats, now.....	2.00
\$5.00 Hats, now.....	2.50

#### Mackinaws:

\$6.00 Mackinaws, now...	3.00
\$6.50 Mackinaws, now...	3.25
\$7.50 Mackinaws, now...	3.75
\$8.00 Mackinaws, now...	4.00
\$8.50 Mackinaws, now...	4.25
\$9.00 Mackinaws, now...	4.50
\$9.50 Mackinaws, now...	4.75
\$10.00 Mackinaws, now..	5.00

#### Furnishing      Good— Shirts:

\$1.00 Shirts, now.....	.50
\$1.50 Shirts, now.....	.75
\$2.00 Shirts, now.....	1.00
\$2.50 Shirts, now.....	1.50
\$3.50 Shirts, now.....	1.75

#### Suspenders:

50c Suspenders, now....	.25
\$1.00 Suspenders, now...	.50

1132

## Men's Bath Robes:

\$5.00 Robes, now.....	\$2.50
\$6.00 Robes, now.....	3.00
\$7.50 Robes, now.....	3.75
\$8.00 Robes, now.....	4.00
\$10.00 Robes, now.....	5.00
\$12.50 Robes, now.....	6.25

## Men's Pajamas:

\$1.50 Pajamas, now.....	.75
\$2.00 Pajamas, now.....	1.00
\$2.50 Pajamas, now.....	1.25
\$3.00 Pajamas, now.....	1.50
\$3.50 Pajamas, now.....	1.75

## Men's Caps:

50c Caps, now.....	.25
\$1.00 Caps, now.....	.50
\$1.50 Caps, now.....	.75

Underwear — Shirts,  
Drawers:

50c Underwear, now....	.25
75c Underwear, now....	.38
\$1.00 Underwear, now..	.50
\$1.25 Underwear, now...	.63
\$1.50 Underwear, now...	.75
\$2.00 Underwear, now...	1.00
\$2.50 Underwear, now...	1.25
\$3.00 Underwear, now...	1.50
\$3.50 Underwear, now..	1.75

## Men's Smoking Jackets:

\$5.00 Jackets, now.....	2.50
\$6.00 Jackets, now.....	3.00
\$7.50 Jackets, now.....	3.75
\$8.00 Jackets, now.....	4.00
\$11.00 Jackets, now....	5.00
\$12.50 Jackets, now....	6.25

## Neckwear:

50c Neckwear, now.....	.25
75c Neckwear, now.....	.38
\$1.00 Neckwear, now....	.50
\$1.25 Neckwear, now....	.63
\$1.50 Neckwear, now...	.75

## Mufflers:

50c Mufflers, now.....	.25
\$1.00 Mufflers, now.....	.50
\$1.50 Mufflers, now.....	.75
\$2.00 Mufflers, now.....	1.00
\$3.00 Mufflers, now.....	1.50

## Garters:

25c Garters, now.....	.13
50c Garters, now.....	.25

## Underwear—Union Suits:

\$1.00 Union Suits, now..	.50
\$1.50 Union Suits, now..	.75
\$2.00 Union Suits, now..	1.00
\$2.50 Union Suits, now..	1.25
\$3.00 Union Suits, now..	1.50
\$3.50 Union Suits, now..	1.75
\$4.00 Union Suits, now..	2.00
\$4.50 Union Suits, now..	2.25
\$5.00 Union Suits, now..	2.50
\$6.00 Union Suits, now..	3.00

Your Pick and Choice of Our  
Children's Department.

## Now Half Price.

## K. E. Blouses:

50c Blouses, now.....	.25
\$1.00 Blouses, now.....	.50

## Stockings:

15c Stockings, now.....	.08
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## Boys' Gloves:

25c Gloves, now.....	.13
50c Gloves, now.....	.25
75c Gloves, now.....	.38
\$1.00 Gloves, now.....	.50
\$2.00 Gloves, now.....	1.00
\$2.50 Gloves, now.....	1.25

1133

## Boys' Hats:

50c Boys' Hats, now.....	.25
\$1.00 Boys' Hats, now...	.50
\$1.25 Boys' Hats, now...	.63
\$1.50 Boys' Hats, now...	.75

## Cow Boys, Indian and

## Scout Suits:

\$1.00 Suits, now.....	50
\$1.25 Suits, now.....	63
\$1.50 Suits, now.....	75



\$2.00 Boys' Hats, now...	1 00	\$1.75 Suits, now .....	88
\$2.50 Boys' Hats, now...	1 25	\$2.00 Suits, now .....	1 00
\$3.00 Boys' Hats, now...	1 50	\$2.50 Suits, now .....	1 25
		\$3.00 Suits, now .....	1 50
		\$3.50 Suits, now .....	1 75

## Children's Rompers:

50c K & E Rompers, now	25
\$1.00 K & E. Rompers, now .....	50
\$1.50 K. & E. Rompers, now .....	75

## Boy's Caps:

25c Boys' Caps, now ....	13
50c Boys' Caps, now ....	25
\$1.00 Boys' Caps, now ....	50

## Stockin- and Skating

Caps:	
25c Caps, now .....	13
50c Caps, now .....	25

## Boys' Suspenders and

## Belts:

25c Grades, now .....	13
35c Grades, now .....	18
50c Grades, now .....	25

## Boys' Ties:

25c Ties, now .....	13
35c Ties, now .....	18
50c Ties, now .....	25
75c Ties, now .....	38

## Suits and Overcoats:

\$3.50 Garments, now ...	1 25
\$3.50 Garments, now ...	1 75
\$4.00 Garments, now ....	2 00
\$4.50 Garments, now ...	2 25
\$5.00 Garments, now ...	2 90
\$6.00 Garments, now ....	3 00
\$6.50 Garments, now ...	3 25
\$7.00 Garments, now ....	3 90
\$8.50 Garments, now ....	4 25
\$10.00 Garments, now ..	5 00
\$12.00 Garments, now ..	6 00
\$15.00 Garments, now ..	7 50

## Night Wear:

50c Night Shirts, now...	25
\$1.00 Night Shirts, now.	50
50c Pajamas, now .....	25
\$1.00 Pajamas, now ....	50

## Boys' Shirts:

(all Sizes and Styles)

50c Shirts, now .....	25
\$1.00 Shirts, now .....	50
\$1.50 Shirts, now .....	75
\$2.00 Shirts, now .....	1 00
\$3.00 Shirts, now .....	1 50

## Boys' Pants:

\$1.50 Pants, now .....	75
50c Pants, now .....	25
\$1.75 Pa its, now .....	88
75c Pants, now .....	38
\$2.00 Pants, now .....	1 00
\$1.00 Pants, now .....	50
\$2.25 Pants, now .....	1 13
\$1.25 Pants, now .....	63
\$2.50 Pants, now .....	1 25

1134

## Boys' Underwear:

(Two Piece Suits and Union A Special Heavy Cotton Suits.)

50c Underwear, now ....	25
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## Wash Suits:

50c Wash Suits, now ....	25
75c Wash Suits, now ....	38
\$1.00 Wash Suits, now ..	50
\$1.25 Wash Suits, now ..	63

## Sweater Coats:

Sweater Coat, in all sizes, original price,

50c, now .....

75c Coats, now .....	38
\$1.00 Coats, now .....	50
\$1.50 Coats, now .....	75
\$2.50 Coats, now .....	1 00

\$1.50 Wash Suits, now ..	75	\$2.50 Coats, now .....	1 25
\$1.75 Wash Suits, now ..	88	Ladies Shirts:	
\$2.00 Wash Suits, now ..	1 00	\$1.50 Shirts, now .....	75
\$2.25 Wash Suits, now ..	1 13	\$2.00 Shirts, now .....	1 00
\$2.50 Wash Suits, now ..	1 25	\$2.50 Shirts, now .....	1 25
\$3.00 Wash Suits, now ..	1 50	\$3.00 Shirts, now .....	1 50
\$3.50 Wash Suits, now ..	1 75		

If you value the power of your money, buy now.

Final Sale Starts Thursday, Dec. 18, at 8 A. M. Store Open every night. The Badders Company, Seventh and Kansas Avenue, Topeka, Kansas.

J. L. ADLER & COMPANY,  
*Credit Accountants in Control.*

1135

EXHIBIT No. 69.

STATE OF KANSAS,  
*County of Shawnee:*

Topeka Capital, Sunday, December 21, 1913.

*Statement.*

George S. Badders, President of the Badders Clothing Company, being first duly sworn, upon oath says:

For the information of the public at large and my personal friends in particular I wish to state that the sale now being conducted for the purpose of raising \$40,000.00 to prevent bankruptcy is rapidly nearing a close.

The merchandise in this sale includes every high grade suit, overcoat and article of furnishing goods purchased by us for our fall 1913 trade. More than \$50,000.00 new fall goods are being sold at prices never before made on high grade merchandise in Topeka.

We overbought for the fall and this, together with a mild winter, has forced us to the extremity of cutting out all profits and suffering a loss of about \$15,000 in order to save our business.

Although a nice business has been done, scarcely an inroad has been made in our immense stock. I will pay to lay in your next winter's supply as

This is positively my last sale. I will never again allow my business to get in shape where such losses are necessary.

GEO. S. BADDERS,  
*President Badders Clothing Co.*

Subscribed and sworn to before me this 20th day of December, A. D. 1913.

O. K. SWAYZE, *County Clerk.*

## EXHIBIT No. 70.

1136 The Badders Company,  
Seventh and Kansas Avenue, Topeka, Kansas.

December thirteen, Nineteen Hundred Thirteen.  
Empire Cap Co., Kansas City, Mo.

GENTLEMEN: Replying to yours of the ninth and to conversation had over telephone we beg to advise that we cannot conveniently make remittance at this time. We had figured on paying your account the 20th. We have increased our Capital \$25,000.00 and this will be available after December 20th. We will make remittance in full next week. Please advise if it will be agreeable to you for us to take out usual discount at that time.

With the Seasons greetings, we are,

Yours very truly,

THE BADDERS COMPANY,  
By GEO. S. BADDERS.

G. S. B.—B.

## EXHIBIT No. 71.

Stein-Bloch Smart Clothes.

George S. Badders, President.  
Seward R. Graham, Sec.-Treas.

The Badders Company,  
Seventh and Kansas Avenue, Topeka, Kansas.

November twenty-eighth, Nineteen Hundred thi-

Spero, Michael & Son, 836 Broadway, New York City.

GENTLEMEN: Your favor of the 25th is at hand. We wish you would consider this matter further and ship the goods as we need them. We unfortunately looked at goods at too many places and when we narrowed our purchases to what we wanted all parties we had seen reported sales and this of course looked like we were buying a lot of goods. As a matter of fact we cancelled about \$12,000.00 on clothing from our fall purchases and now find ourselves  
1137 short. We bought from the following houses only in New York City (all others cancelled).

Cohen & Lang .....	\$862.50
Lipps Bros. ....	1941.75
J. Cohen Sons Co. ....	1873.50
Robert Kamber .....	1200.00
Nipson System .....	1200.00

All goods have been shipped with the possible exception of Nispon System, whose invoice we have not received. We can use your merchandise and for that reason did not cancel.

Will you not talk with Robert Kamber & Hoffman, J Samuels & Bros. and call Stein-Bloch at Rochester on long distance if in any doubt as to our responsibility.

Yours very truly,

THE BADDERS COMPANY,  
By GEO. S. BADDERS.

G. S. B.—B.

(Stamped) Answered by B.

### EXHIBIT No. 72.

Stein-Bloch Smart Clothes.

George S. Badders, President.  
Seward R. Graham, Sec.-Treas.

Copy.

The Badders Company,  
Seventh and Kansas Avenue, Topeka, Kansas.

November twenty-eighth, Nineteen Hundred Thirteen.

(Stamped:) Received Dec. 1, 1913.

Spero, Michael & Son, New York City.

GENTLEMEN: Your favor of the 25th is at hand. We wish you would consider this matter further and ship the goods as we need them. We unfortunately looked at goods at too many places and when we narrowed our purchases to what we wanted all parties we had seen reported sales and this of course looked like we were buying a lot of goods. As a matter of fact we cancelled about  
1138 \$12000.00 in clothing from our Fall purchases and now find ourselves short. We bought from the following houses only in New York City (All others were cancelled):

Cohen & Lang.....	\$862.50
Lipps Bros. ....	1,941.75
J. Cohen Sons Co.....	1,873.50
Robert Kamber .....	1,200.00
Nispon System .....	1,200.00

All goods have been shipped with the possible exception of Nipson System, whose invoice we have not received. We can use your merchandise and for that reason did not cancel it.

Will you not talk with Robert Kamber & Hoffman, J. Samuels &

Bros. and call Stein-Bloch at Rochester on long distance if in any doubt as to our responsibility.

Yours very truly,

(Signed)

THE BADDERS COMPANY,  
By GEO. S. BADDERS.

G. S. B.—B.

GENTLEMEN: Above for your information.

THE BADDERS CO.,  
G. S. B.

### EXHIBIT No. 73.

Stein-Bloch Smart Clothes.

George S. Badders, President.  
Seward R. Graham, Sec.-Treas.

The Badders Company,  
Seventh and Kansas Avenue, Topeka, Kansas.

December First, Nineteen Hundred Thirteen.

Lipps Bros., 622 Broadway, New York City.

GENTLEMEN: Please send us at once by express thirty blue serge suits your No. 6883 in following sizes:

1139	34	35	36	37	38	40
	3	5	5	5	8	4

Yours very truly,

THE BADDERS COMPANY,  
By GEO. S. BADDERS.

G. S. B.—B.

### EXHIBIT No. 74.

Stein-Bloch Smart Clothes.

George S. Badders, President.  
Seward R. Graham, Sec.-Treas.

The Badders Company,  
Seventh and Kansas Avenue, Topeka, Kansas.

December 2, 1913.

H. Kamber & Co., 24 University Place, New York City.

GENTLEMEN: Of the swatches sent us Nov. 7th you may send the following:

## THE UNITED STATES.

817

Size	34	35	36	37	38	40	42	44
Lot # 4328..			1	1	1	1	1	1
22285.. 1		1	1	1	1	1		
4274.. 1			1	1	1	1	1	
22499.. 1		1	1	1	1		1	
4295..		1	1	1	1	1	1	
4299..		1	1	1	1	1		
22494.. 1		1	1	1	1	1	1	
22496..			1	1	1	1	1	1
Stout 22433..				1	1	1	1	1
" 22509..					1	1	1	1
" 22491..				1	1	1	1	1
Serge 22490.. 2		3	3	5	5	3	2	2
Reg. 22509..			1	1	1	1		

A total of ninety suits. If you are out of any of above a reasonable substitution will be allowed. Please rush M. D. Care Santa Fe.

Very truly yours,

THE BADDERS CO.,  
GEO. S. BADDERS.

1140

EXHIBIT No. 75.

Stein-Bloch Smart Clothes.

George S. Badders, President.  
Seward R. Graham, Sec. Treas.

The Badders Company,  
Seventh and Kansas Avenue, Topeka, Kansas.

December 2nd, 1913.

M. Glickman &amp; Co., Philadelphia, Pa.

GENTLEMEN: Your invoice Nov. 4th. Please duplicate this order for us. Also send us the best serge suit you have to offer at \$8.50 or \$9.00.

Yours very truly,

THE BADDERS COMPANY,  
By GEO. S. BADDERS.

G. S. B.—B.

If you have some close-outs in fancys, soft finish or worsted at a price send swatches.

BADDERS CO.

Send Night Telegram.

## EXHIBIT No. 76.

## The Stein-Bloch Smart Clothes.

George S. Badders, President.  
Seward R. Graham, Sec. Treas.

The Badders Company,  
Seventh and Kansas Avenue, Topeka, Kansas.

December Fourth,  
Nineteen Hundred Thirteen.

Cohen, Goldman & Co., Broadway at Fourth, New York City.

GENTLEMEN: Yours of December 1st. We appreciate fully the reason for the terms you suggest and under the circumstances will accept the coats for cash 9% off. Please ship half the coats giving is a line of sizes by express and let the balance come by freight.  
1141 Yours very truly,

THE BADDERS COMPANY,  
By GEO. S. BADDERS.

We will be in the market for some trousers after our sale but will come to market on this.

BADDERS CO.

## EXHIBIT No. 79.

## Stein-Bloch Smart Clothes.

George S. Badders, President.  
Seward R. Graham, Sec. Treas.

The Badders Company,  
Seventh and Kansas Avenue, Topeka, Kansas.

December Eighth, Nineteen Hundred Thirteen.

Cluett Peabody & Co., Kansas City, Mo.

GENTLEMEN: Your favor of the sixth is at hand. We wrote you several days ago asking your indulgence until the 20th inst. and advised you later of our sale which together with an increase of \$25,000 in our capital stock which will be available after December 20th will place us in a position to not only take our discounts promptly but will allow us to anticipate as well.

Thanking you, we are,  
Yours very truly,

THE BADDERS COMPANY,  
By GEO. S. BADDERS.

G. S. B.—B.

## EXHIBIT No. 80.

Stein-Bloch Company.

George S. Badders, President.  
Seward R. Graham, Sec. Treas.

The Badders Company,  
Seventh and Kansas Avenue, Topeka, Kansas.

(Stamped) Received Dec. 15, 1913.

1142 December Eleventh, Nineteen Hundred Thirteen.

M. C. Lilley &amp; Co., Columbus, Ohio.

GENTLEMEN: Please send two of your No. 172 in dark brown size 24 and one same 26; one each 17, 18, 19, of No. 439; one size 24 leather lined dark brown No. 180; one same 26"; one dark brown leather lined size 24 No. 136; one 15 and one 16 No. 429. Please rush.

Yours very truly,

THE BADDERS COMPANY,  
By GEO. S. BADDERS.

G. S. B.—B.

## EXHIBIT No. 81.

The Badders Company,  
Seventh and Kansas Avenue, Topeka, Kansas.

December Eleventh, Nineteen Hundred Thirteen.

The Hartman Trunk Co., Chicago, Ill.

GENTLEMEN: Please send for personal use of writer one 36" trunk your No. 256 and one 36" your No. 296.

Yours very truly,

THE BADDERS COMPANY,  
By GEO. S. BADDERS.

G. S. B.—B.

## EXHIBIT No. 82.

The Badders Company,  
Seventh and Kansas Avenue, Topeka, Kansas.

December Twenty-ninth, Nineteen Hundred Thirteen.

1143 Ely Walker Dry Goods Co., St. Louis, Mo.

GENTLEMEN: Please send by express ½ dozen pair woolen blankets 72x85 White or cream body Yellow or blue ends. \$6.00 to \$8.00 quality. Please rush.

Yours truly,

THE BADDERS COMPANY,  
By GEO. S. BADDERS.

G. S. B.—B.



## EXHIBIT No. 83.

The Badders Company, Clothing, Hats, Furnishings.

TOPEKA, KANSAS, Dec. 2nd, 1913. No. 336.

Pay to the Order of Cash \$2500.00. Twenty Five Hundred No/100 Dollars,

THE BADDERS COMPANY,  
By GEO. S. BADDERS, *President*.

To The Bank of Topeka, Topeka, Kansas.

Stamped: Paid Dec. 2, 1913. Paying Teller.  
Not Over Twenty Five Hundred \$2500.  
(Perforated) Paid 12 2 13.

## EXHIBIT No. 84.

The Badders Company, Clothing, Hats, Furnishings.

TOPEKA, KANSAS, Dec. 17, 1913. No. 3340.

Pay to the Order of Geo. S. Badders \$2000.00. Two Thousand No/100 Dollars.

THE BADDERS COMPANY,  
By GEO. S. BADDERS, *President*.

To The Bank of Topeka, Topeka, Kansas.

Endorsed: Geo. S. Badders. (Perforated) Paid 12 18 13.  
Stamped on back: Topeka Clearing House Dec. 18, 1913. Endorsements guaranteed. The Merchants National Bank.

## EXHIBIT No. 85.

1144 The Badders Company, Clothing, Hats, Furnishings.

TOPEKA, KANSAS, Dec. 22, 1913. No. 3344.

Pay to the Order of Cash \$6000.00. Six Thousand No/100 Dollars.

THE BADDERS COMPANY,  
By GEO. S. BADDERS, *President*.

To The Bank of Topeka, Topeka, Kansas.

(Perforated) Paid 12 23 13.  
Stamped: Paid Dec. 23, 1913. Paying Teller.

## EXHIBIT No. 86.

The Bank of Topeka, Topeka, Kansas. 4401.

Jan. 14, 1914. No. 4475.

Pay to the order of Geo. S. Badders, \$1000.00. One thousand Dollars.

Cashier's Check.

R. H. KNOWLES, *Ass't Cashier.*

Note over one thousand, \$1000\$.

Stamped: Jan. 16, 1914. Paying Teller.

Endorsed: Pay to the order of The Bank of Topeka. Geo. S. Badders.

1145

## EXHIBIT No. 87.

Please Examine and report immediately.

The Badders Clothing Co., Topeka, Kansas, in account with Bank of Topeka, Topeka, Kansas.

Nov. 3, 1913, Checks...	1304 36	Nov. 1, 1913, Balance..	1417 19
4, ...	117 76	3, Deposit ..	1504 64
5, ...	213 64	5, ..	707 41
6, ...	53 15	10, ..	3624 27
7, ...	1 84	13, ..	2456 25
8, ...	202	13, ..	310 46
10, ...	2516 91	17, ..	1021 31
11, ...	125 50	20, ..	640 18
12, ...	50 25	24, ..	881 27
13, ...	5034	28, ..	501 15
15, ...	33 02	29, ..	1976 67
17, ...	154 61	Dec. 1, ..	301 45
18, ...	71 25	6, ..	808 66
19, ...	6	10, ..	500 04
20, ...	25	15, ..	1810 43
24, ...	1059 27	18, ..	3107 77
25, ...	91 25	20, ..	3208 31
26, ...	7		
28, ...	203 17		
29, ...	120		
Dec. 1, ...	340 31		
2, ...	2755 58		
3, ...	62		
4, ...	1020 73		
12, ...	5		
15, ...	584 12		
18, ...	2000		
20, ...	300		
23, ...	6319 74		
	<hr/>		
	24777 46		
			<hr/>
			24777 46

Balance withdrawn Dec. 23, 1913.

1146

## EXHIBIT No. 88.

Tax Commission Form 2. Abstract Page 25. Page 1.

*Statement of Personal Property.*

Liabile to taxation on the first day of March, 1913, in school district No. 23, in the city of Topeka, county of Shawnee, State of Kansas, in the possession or under the control of George S. Badders, as owner, whose residence on the said first day of March was No. 1160 College ave; business address, ———.

## Notice.

The Board of County Commissioners meet as a board of equalization on the First Monday in June of each year. Any error in assessment can be corrected at that time by appearing before the board and making your statement of the error. If you do not appear, your property will be assessed as it appears on this statement.

Attention is called to the following provisions of chapter 408, Laws of 1907, Sections 27, 29:

Sec. 27. If any person or corporation shall knowingly give a false or fraudulent list, schedule or statement required by this act, or shall fail or refuse to deliver to the assessor, when called upon for that purpose, a list of the taxable property which, under this act, is required to be listed, or shall temporarily convert any part of such property into property not taxable, for the fraudulent purpose of preventing such property from being listed, or of evading the payment of taxes thereon, or shall transfer or transmit any property to any person with such intent, he or it shall be guilty of a misdemeanor, and subject to a fine of not less than fifty dollars nor more than five thousand dollars. Prosecutions under this act shall be brought by the county attorney in the district court of the proper county, upon complaint made by any tax commissioner, county assessor, or deputy county assessor. A fee of twenty five dollars shall be taxed as costs in each case in which a conviction is had, and said fee shall  
1147 be paid to the county attorney for his services to be taxed as costs in the case, but in no case shall the county be liable therefor. Executions may be issued for the collection of all fines and costs imposed under the provisions of this act.

Sec. 29. In every case where any person shall refuse to make out and deliver to the proper deputy assessor the statement required under this act, or shall refuse to take and subscribe to any of the oaths or affirmations required, the deputy assessor shall proceed to ascertain the number of each description of the several enumerated articles of the property and value thereof, and for this purpose he may examine on oath any person or persons whom he may suppose to have knowledge thereof; and such deputy assessor shall make a note of such refusal in a column opposite the person's name, and the county assessor shall add to such valuation, when returned by the deputy assessor, fifty per centum on the value so returned.

## Interrogatories To Be Answered by Person Assessed.

Interrogatory 1. Are you, or were you, on the first day of March of the present year, the executor of the last will or the administrator of the estate of any deceased person; or the guardian of the estate of any infant or person of unsound mind; or the trustee of the property of any person; or the receiver of any corporation, association, or firm; or the agent, attorney or banker investing, loaning or otherwise controlling the money or other property of any other person resident in this State; or the president or accounting officer of any corporation; or a partner, consignee, or pawnbroker? If yes, designate for whom you were then, or are now, acting in such representative or fiduciary capacity; and if you were, or are now, acting under the authority of any particular court, name court, and also state to what court you report. No.

Interrogatory 2. Have you, before the first day of march of the present year, either personally or through the agency of  
1148 others, caused all or any part of your taxable money or other property to be temporarily converted, either by sale, borrowing, exchange, or in any other manner, into bonds or other securities of the United States, not taxable, or any other property not taxable, with the intention to pay back, return or exchange, or sell back such property after you have made out your tax statement, for the purpose of evading the payment of taxes on such property; or did you, on or after the first of March of the present year, and before you saw this interrogatory, pay back, return, re-exchange or sell back such property for the purpose aforesaid? No.

Interrogatory 3. If you have converted any of your money or property, or money or property of any other person, as inquired of you, then state when the same was so converted or invested, and the kind and amount and value thereof:

	Valuation by owner under oath.
12 Plate and jewelry, including diamonds.....	50
13 Pianofortes .....	100
m Value of household furniture.....	250
n Value of library .....	\$50
Less exemption on same .....	\$50
Total amount.....	400
Constitutional exemption allowed.....	200
Taxable property .....	200

THE STATE OF KANSAS,  
Shawnee County, ss:

I do solemnly swear that the foregoing statement of personal property contains a full and true list of all my notes, bonds, mortgages, moneys, whether on hand or on deposit, and credits less legal deductions, and of all other personal property of whatever name or char-

acter which by law I am required to list, either on my own behalf or in behalf of others, and that the answers I have made to interrogatories Nos. 1, 2 and 3, on page 1 hereof, are true to the best of my knowledge. So help me God.

(Signed)

GEORGE S. BADDERS.

Sworn to before me and subscribed in my presence, this 17th day of March A. D. 1913.

B. M. DREISBACH,  
*Deputy Assessor.*

1149 To George S. Badders.

SIR: You are hereby required to make out and hold in readiness a statement of personal property which, by the laws of the State of Kansas, you are required to list for taxation for the year A. D. 1913. Also, the number of school district in which you resided on the 1st day of March of said year.

B. M. DREISBACH,  
*Deputy Assessor.*

STATE OF KANSAS,  
*Shawnee County, ss:*

I do hereby certify that the within and foregoing is a true copy of the original statement of the personal property of George S. Badders, as returned for taxation by the County Assessor for the year 1913, as the same appears on file in my office.

Witness my hand and the official seal of Shawnee County this 10th day of December, 1914.

[SEAL.]

O. K. SWAYZE,  
*County Clerk.*

EXHIBIT No. 89 (ENVELOPE).

(Addressed to) Cohen & Lang, New York City. 707 Broadway.  
(Return Card) The Badders Company, Seventh and Kansas Avenue,  
Topeka, Kansas. (Post marked) Topeka, Kansas, Nov. 28, 3:30  
P. M. 1913. (Bearing a two cent stamp)

EXHIBIT No. 89-A.

The Mills Dry Goods Company.

No. 12923

TOPEKA, KANSAS, Dec. 24, 1913.

Pay to the order of The Badders Co., \$312.38 Three Hundred twelve and 38/100 Dollars.

THE MILLS DRY GOODS COMPANY,  
Per A. M. MILLS, *President.*

To the Bank of Topeka, Topeka, Kansas.

Countersigned

— — —, *Treasurer.*

Perforated 12 27 13

(Stamped on Back) The Badders Company.

1150

## EXHIBIT No. 90.

Sollis Cohen, Pres't & Treas. Gabe Lang, 1st V. Prest. Dave Lang, 2d V. Prest.

Cohen & Lang,

Makers of Elk Brand Clothing for Young Men, Boys and Juveniles,  
707, 709 Broadway; 270, 272, 274 Mercer St.

The Sign of the Elk.

(Elk head.)

Philadelphia, Baltimore, St. Louis, Chicago.

NEW YORK, Dec. 5, 1913.

The Badders Co., Topeka, Kansas.

GENTLEMEN: We have your night lettergram of the 4th inst., advising us in substance that we may reship our recalled shipment of recent date. We are accordingly reshipping these goods today by freight, agreeable to your suggestion as contained in your night letter.

Inasmuch as this freight shipment should reach you at this time of the year in 8 or 10 days, you will no doubt receive these goods in ample time for advantageous selling, inasmuch as the sale of overcoats has been greatly retarded by reason of the warm and unseasonable weather.

We have changed the terms on this shipment to read as Dec. 5th.-9/10, with the option of regular terms of 7/10-60 x from Dec. 5th. and you may change the terms on your invoice accordingly.

Regretting the unfortunate circumstances which has surrounded this transaction, and sincerely hoping that you will enjoy a good overcoat sale during the month of December and January, which necessarily must follow as soon as the cold weather starts in, we beg to remain,

Very truly yours,

COHEN & LANG.

ML/H.

1151

EXHIBIT No. 92.

Sollis Cohen, Pres't & Treas. Gabe Lang, 1st V. Pres't. Dave Lang, 2nd V. Pres't.

Cohen & Lang,

Makers of Elk Brand Clothing for Young Men, Boys and Juveniles.  
707, 709 Broadway. 270, 272, 274 Mercer St.

The Sign of the Elk.

(The Elk Head.)

Philadelphia, Baltimore, St. Louis, Chicago.

NEW YORK, Dec. 1, 1913.

Geo. S. Badders, Topeka, Kansas.

DEAR SIR: We are in receipt of copy of your letter addressed to Spero, Michael & Son of this city, relative to your recent purchases in New York City, from our firm, as well as several others, requesting that we take the matter of your purchases up with several firms here indicated in your letter.

Pursuant to this entire matter, we wish to say that we made you a shipment of the goods you selected, the following day after you purchased same, amounting to \$862.50, but when we received innumerable inquiries, showing an abnormal amount of purchases at such a late period in the season, we naturally felt at a loss to understand why such heavy purchases should have been made at this time, and we accordingly recalled our shipment which we now expect back within the next day or two.

Since reading the letter above referred to, and having a more clear and intelligent idea of what you have done in the matter, we feel more favorably impressed, and will re-ship the goods to you, as per our invoice of \$862.50, as soon as they reach us, but before doing so, we would like you to advise us whether it will be agreeable to you to accept same, and whether it will be in time for you to receive them at this deferred date.

Upon receipt of this letter, you may wire us at our expense of your decision in the matter. Awaiting your wire reply, we are,

Very truly yours,

COHEN & LANG.

ML/H.

1152

Ex. No. 93.

Factory: 156-158 Crosby Street.

Lipps Bros.,

Manufacturers of Men's and Young Men's Clothing,  
622, 624 Broadway.Phil Lipps.  
Charles L. Lipps.  
Bernard H. Lipps.Chicago, Ill.,  
Medunah Bldg.  
San Francisco, Cal.,  
95 Battery Street.  
Columbia, D. C.,  
1522 Main Street.  
Omaha, Neb.,  
518 S. 10th Street.  
Boston, Mass.,  
Boylston, Bldg.

NEW YORK, 11/22/13.

For and in consideration of the sum of \$1 00/100) Dollar and other considerations, I, George S. Badders, herewith paid to me by Lipps Bros., do hereby guarantee the amount of (\$2,000) Two Thousand Dollars of Badders Clo. Co., Inc., Topeka, Kansas and should they fail to meet their obligations when due, I promise to pay the same in full.

GEO. S. BADDERS.

1153

EXHIBIT No. 94.

I, Frederick Wm. Kobbe, Secretary of a Special Meeting of the stockholders of The Apex Collar & Shirt Company, Inc., held on the eighteenth day of January, 1913, do hereby certify that the following is a true and complete copy of the proceedings of the said meeting and of the proceedings covering the calling and noticing thereof, namely:

The said special meeting was held at the principal office of the Company, No. 49 Wall Street, in the City of New York, State of New York, on the 18th day of January, 1913, at twelve o'clock noon, for the purpose of submitting to the stockholders of said The Apex Collar & Shirt Company, Inc., and considering the approval of, the annexed agreement, bearing date the 20th day of December, 1912, for the consolidation of said The Apex Collar & Shirt Company, Inc., with Cluett, Peabody & Co., under the name of Cluett, Peabody & Co., Inc.

The said special meeting was called pursuant to order of the Board of Directors of the Company upon notice of at least two weeks, specifying the time, place and object thereof, addressed to each stockholder of the Company at his last known post-office address and de-



posited in the postoffice postage prepaid, and published for at least two successive weeks in a newspaper published and circulating in the City and County of New York, in which City and County the said The Apex Collar & Shirt Company, Inc., has its principal place of business, and in newspapers published and circulating in the City of Troy and County of Rensselaer in which City and County the said Cluett, Peabody & Co. has its principal place of business.

Pursuant to the notice aforesaid the stockholders of said The Apex Collar & Shirt Company, Inc., met at the place and on the day and hour specified therein.

There were present at such meeting in person or by proxy stockholders owning all the issued and outstanding capital stock of 1154 said The Apex Collar & Shirt Company, Inc.; to wit, the owners of 25 shares out of a total issued and outstanding amount of 25 shares.

The meeting organized by the election of Knowlton Durham, as Chairman, and Frederick Wm. Kobbe, the undersigned, as Secretary.

The Chairman of the meeting submitted affidavits showing that notice of the meeting, addressed and deposited as aforesaid, had been duly served on each stockholder of the company and had been duly published in the "New York Times," County of New York, every day for at least two successive weeks preceding the meeting, in the "Troy Daily Times," City of Troy and County of Rensselaer, every day for at least two successive weeks preceding the meeting (except Sundays on which days the said newspaper is not published) and in the "Troy Budget," City of Troy and County of Rensselaer, on each of the Sundays of the two successive weeks during which the said notice was being published in the "Troy Daily Times" as aforesaid.

Hereto annexed are the affidavits submitted to the meeting showing the service and publication of the notice as aforesaid.

The Chairman then submitted and read to the meeting the minutes of the meeting of the Board of Directors of the Company at which the annexed agreement was approved, its execution authorized and the Secretary of the Company directed to call the meeting of stockholders for the purpose of considering the approval thereof.

The annexed agreement, executed by the corporate parties thereto under their respective corporate seals and signed by a majority of their respective Boards of Directors, was thereupon submitted to the meeting.

After being read and considered a vote was taken by ballot upon the question of approving or rejecting the said agreement.

The said ballots were duly cast in person or by proxy, and upon a canvass of such ballots, which canvass was duly made by Tellers elected by the meeting for the purpose, it was found that 1155 the votes of stockholders owning all of the issued and outstanding capital stock of the Company (to wit, 25 shares) had been cast in favor of the approval of the said agreement of consolidation and of all the terms, provisions and conditions thereof, and that no votes had been cast against the approval thereof.

Thereupon said agreement of consolidation, more than two-thirds in amount of the capital stock of the Company having voted in favor thereof, was declared duly approved and adopted, and there being no further business, the meeting, on motion, adjourned.

In witness whereof, I, the Secretary of the said meeting, have made, signed and sworn to the foregoing copy of proceedings in duplicate this 28th day of January, 1913.

FREDERICK WM. KOBBE, *Secretary.*

STATE OF NEW YORK,

*County of New York, ss:*

Frederick Wm. Kobbe, being duly sworn, deposes and says: that he was elected to act, and did act, as secretary of a special meeting of the stockholders of The Apex Collar & Shirt Company, Inc., held for the purpose of considering the annexed agreement for the consolidation of said company with Cluett, Peabody & Co. dated December 20th, 1912; that the foregoing is a copy of the proceedings of said meeting; that said copy is, in all respects, a correct copy of such proceedings and of all the proceedings of said meeting and that notice of said meeting was given and published pursuant to statute as in said copy of proceeding set forth. I further depose and say that the total authorized, issued and outstanding capital stock of said The Apex Collar & Shirt Company, Inc., is 25 shares of the par value of two thousand five hundred (2,500) dollars.

FREDERICK WM. KOBBE.

Sworn to before me this day the 28th of January, 1913.

[SEAL.] GEORGE E. HITE, JR.,  
*Notary Public, Westchester County.*

Certificate Filed in New York County #105. Register's No. 3287.

1156

Cluett, Peabody & Co.  
and  
The Apex Collar & Shirt Company, Inc.

*Consolidation Agreement.*

Dated December 20th, 1912.

This agreement entered into and made this 20th day of December, one thousand nine hundred and twelve, between Cluett, Peabody & Co. (hereinafter referred to as the "Cluett Company"), party of the first part, and The Apex Collar & Shirt Company, Inc. (hereinafter referred to as the "Apex Company") party of the second part, under the corporate seals of said corporations, witnesseth:

That Cluett, Peabody & Co., said party of the first part, is a corporation organized under the Business Corporations Law of the State of New York for the purpose of carrying on the manufacture,

sale and disposition of shirts, collars, cuffs, waists, night robes, pajamas and all other articles of apparel.

That The Apex Collar & Shirt Company, Inc., said party of the second part, is a corporation also organized under the Business Corporations Law of the State of New York for the purpose of carrying on business of the same or of a similar nature as the business of the said Cluett Company, to wit: the manufacture, purchase, sale and otherwise dealing in and disposing of shirts, collars, cuffs, waists, night robes, pajamas and other articles of apparel.

Now, therefore, in consideration of the mutual covenants and agreements herein contained, the said parties hereto do hereby merge and consolidate such corporations into a single corporation under and in pursuance of the laws of the State of New York in such case made and provided, and by these presents they do hereby covenant and agree upon and prescribe the terms and conditions of such consolidation and the mode of carrying the same into effect, which said terms and conditions and mode of carrying the  
1157 same into effect they mutually covenant and agree to observe and perform as follows, towit:

First. That the name of the Corporation hereby formed by such consolidation shall be Cluett, Peabody & Co., Inc.

Second. That the number of Directors who shall manage its affairs shall be fourteen. (14.)

Third. That the names and post office addresses of the Directors of such new Corporation for the first year are as follows, towit:

Names.	Post Office Addresses.
F. F. Peabody.....	Troy, New York.
H. S. Kennedy.....	Troy, New York.
Robert Cluett, Jr.....	Troy, New York.
G. A. Cluett.....	Troy, New York.
E. Harold Cluett.....	Troy, New York.
C. A. Culver.....	No. 385 Fourth Ave., the City of New York, New York.
A. E. Cluett.....	Troy, New York.
A. Gillespie.....	Troy, New York.
C. H. Gray.....	No. 385 Fourth Ave., the City of New York, New York.
C. S. Dean.....	Troy, New York.
W. H. Titus.....	No. 512 South Fifth Ave., Chi- cago, Illinois.
H. P. Statzell.....	No. 1211 Arch St., Philadelphia, Pennsylvania.
N. A. Flood.....	No. 44 West 44th St., the City of New York, New York.
Geo. L. Nichols.....	Katanoh, Westchester County, New York.

Fourth. That the term of existence of such new corporation shall be fifty years.

Fifth. That the names of the Towns and Counties in which the

operations of such new corporation are to be carried on are the County of Rensselaer in the State of New York, the various other Towns and Counties of the State of New York and of the several States and Territorial Possessions of the United States and the Towns, Counties or other subdivisions of all foreign countries.

Sixth. That the names of the City and County in the State of New York in which the principal place of business of such new Corporation is to be situated are the City of Troy and County 1158 of Rensselaer.

Seventh. That the amount of the capital stock of such new Corporation is to be twenty-eight million dollars (\$28,000,000) of which amount eighteen million dollars (\$18,000,000) is to be common stock and ten million dollars (\$10,000,000) is to be preferred stock.

Eighth. That the number of shares into which such capital stock is to be divided is two hundred and eighty thousand (280,000) of the par value of one hundred dollars (\$100) each and of said number of shares one hundred thousand (100,000) thereof are to be preferred stock and one hundred and eighty thousand (180,000) thereof are to be common stock:

(a) The holders of the preferred stock shall be entitled to receive, when and as declared, from the surplus profits of the corporation, dividends at the rate of seven per centum per annum and no more, payable quarter-yearly on the first days of January, April and October in each year. Dividends on the preferred stock shall be cumulative from the first day of January, 1913, and shall be payable before any dividends on the common stock shall be paid or set apart, so that if in any year dividends amounting to the full seven per centum shall not have been paid on the preferred stock, the deficiency shall be paid before any dividends shall be paid or set apart for the common stock.

(b) The Company shall annually, on or before the thirty-first days of December in each of the years 1916, 1917, 1918, 1919 and 1920, out of the surplus profits of the Company, if sufficient after all cumulated and defaulted dividends (if any) upon said preferred stock shall have been paid or set apart, acquire, by purchase thereof in such manner as the Board of Directors may determine from time to time, but at not to exceed one hundred and twenty-five dollars (\$125) per share, plus accrued and unpaid dividends thereon, at least one per centum of the largest amount in par value of said preferred stock that shall have been at any one time issued and outstanding, and on or before the thirty first day of 1159 December, 1921, and on or before the thirty-first day of December in each and every year thereafter (until all the preferred stock shall have been retired) shall, upon the conditions and in the manner above specified, acquire two per centum of the largest amount in par value of said preferred stock that shall have been, at any one time issued and outstanding. If in any year the Company shall fail to acquire by purchase as aforesaid all, or any part, of the amount of the preferred stock hereinbefore provided to be purchased by it on or before the thirty first day of December in

any such year, it shall set aside, but only out of such surplus profits, on or before the thirty-first day of December in each such year, an amount, which, taken at one hundred and twenty-five dollars (\$125) per share and all unpaid and accrued dividends thereon, shall be sufficient to redeem an amount of preferred stock equal to the amount which it shall so have failed to purchase. The fund so set aside shall be used to acquire preferred stock by purchase thereof in such manner as the Board of Directors may determine whenever purchasable, at not to exceed one hundred and twenty five dollars (\$125) per share, plus accrued and unpaid dividends thereon; and, whenever said fund shall be sufficient to redeem at least ten per centum in amount of the preferred stock then outstanding at one hundred and twenty-five dollars (\$125) per share, plus accrued and unpaid dividends thereon, said fund shall be used for the redemption of preferred stock accordingly. Whenever preferred stock is redeemed it shall, at the option of the Board of Directors, be redeemed in either of the following methods: (1) by lot or (2) by redeeming such portion of the preferred stock held by each preferred stockholder as the total amount of said preferred stock then called for redemption shall bear to the total amount of preferred stock then outstanding. The Board of Directors shall have power and authority to prescribe the manner in which, and the notice, terms and conditions upon which, preferred stock shall be redeemed from time to time, and shall have power to, among other things, cause the company to issue scrip representing a fraction of a share of stock and to deprive the owner or holder of such scrip of any voting power and of the right to receive any such dividends thereon, provided that any such scrip shall be convertible together with sufficient other scrip into full share certificates of stock, which certificates shall, upon being issued, entitle the holder thereof to receive such dividends as have theretofore accrued and been paid on other outstanding stock of the same class but have not been paid to the holders of such scrip. If in any year the Company shall fail to purchase the amount of preferred stock hereinbefore provided to be purchased in any such year, or shall fail to set aside a sum equal to the difference between the amount of preferred stock purchased during such year and an amount sufficient to purchase the amount of such preferred stock hereinbefore provided to be purchased or redeemed in respect of such year at one hundred and twenty five dollars (\$125) per share, and unpaid and accrued dividends, the deficiency (before any dividend on the common stock shall be paid or set apart) shall be made good out of the surplus profits in subsequent years; and, if in any year the Company shall purchase or acquire an amount of preferred stock in excess of that hereinbefore provided to be acquired by it for such year or shall set aside an amount in cash in excess of the amount required to be set aside for such year, the obligations of the Company with respect to the acquisition, retirement or redemption of preferred stock and the setting aside of funds therefor, as hereinbefore provided, in subsequent years shall be reduced accordingly.

(c) Any funds set aside as aforesaid for the acquisition, retire-

ment or redemption of preferred stock may be used for the payment of dividends on the preferred stock, provided there are no other funds of the Company available for that purpose, and provided, further, that all encroachments upon or arrears in said funds shall be first made good before any dividends shall be paid or declared on the common stock.

(d) Subject to the foregoing provisions, and not otherwise, such dividends (payable either in cash, common stock or otherwise) as may be determined by the Board of Directors, may be declared and paid on the common stock from time to time out of the remaining surplus profits of the Company; and the Board of Directors shall have power, from time to time, to fix and determine and to vary the amount of the working capital of the Company, and, subject to the provisions of the foregoing subdivision (b), to direct and determine the use and disposition of any surplus profits of the Company, over and above the capital stock paid in.

(e) The amount of preferred stock shall not be increased, nor shall any stock having equal or superior preferences or priorities over said preferred stock be authorized or issued, unless such increase or such issue shall have been previously authorized by the consent of at least three fourths in interest of the then issued and outstanding stock of the Company of each class (both preferred and common) given separately in person or by proxy at a meeting specially called for that purpose.

(f) No mortgage, whether real estate or chattel, upon any part of the real or personal property, assets, effects, undertaking or goodwill of the Company shall be created or be valid or effective, unless the same shall have been previously authorized by the consent of the holders of at least three-fourths in interest of each class of outstanding stock of the Company (both preferred and common) given separately in person or by proxy, either in writing or at an annual meeting or at a special meeting called for that purpose; but this prohibition shall not be deemed or construed to apply to, nor shall it operate to prevent, the giving of purchase money mortgages or other purchase money liens on property to be hereafter acquired by the Company, or the acquisition of property subject to mortgages, liens and encumbrances thereon then existing.

(g) Upon any dissolution, liquidation, merger or consolidation of the Company, whether voluntary or involuntary (except in the event of insolvency or bankruptcy) or upon any distribution of capital, no sum whatsoever shall be paid to, nor shall any assets whatsoever be distributed among, the holders of the common stock, until there shall have been paid to the holders of the preferred stock one hundred and twenty five dollars (\$125) per share and the amount of all unpaid and accrued dividends thereon; and, in the event of any dissolution or liquidation of the Company, by reason of its insolvency or bankruptcy, there shall be paid to the holders of the preferred stock the par value thereof and the amount of all unpaid and accrued dividends thereon before any sum shall be paid to or any assets distributed among the holders of the common stock. After such payments to the holders of the pre-

ferred stock, all remaining assets and funds of the Company shall, in any of the above events, be paid to the holders of the common stock, according to their respective shares.

(h) The entire voting power for the election of Directors shall be vested in the common stock, except as in this paragraph otherwise provided. The preferred stock shall have no voting power in the election of Directors unless and until four quarterly dividends payable thereon shall be in default. Immediately upon the happening of such event, and thereafter until such defaults and all defaults subsequent thereto shall have been made good, the voting power for the election of Directors shall be vested exclusively in the preferred stock. However, if and when the defaulted dividends shall thereafter be paid, the voting power in the election for Directors shall again be vested exclusively in the common stock. The terms of office of all persons who may be Directors of the Company at the time when the voting power of the preferred stock shall accrue as herein provided shall terminate upon the election of their successors at a meeting of the preferred stockholders, which shall be held at any time thereafter upon notice similar to that provided in the By-laws for an annual meeting, at the request in writing of any holder of the preferred stock, addressed to the Secretary of the Company at its principal business office. Upon the termination of the voting power of the preferred stock at any time by reason of the payment of all defaulted dividends on such stock, the terms of office of all persons who may have been elected Directors of the Company by vote of the preferred stockholders shall terminate upon the election of their successors by the holders of the common stock at a meeting of stockholders, which shall be held at any time thereafter upon notice similar to that provided in the By-Laws for an annual meeting, at the request, in writing, of any holder of the common stock, addressed to the Secretary of the Company at its principal business office. At all stockholders' meetings, except as otherwise herein expressly provided, each share of stock of the Company (both preferred and common) shall be entitled to one vote.

Ninth. That the manner of distributing such capital stock of such new Corporation among the holders of the respective capital stocks of the respective parties hereto, shall be as follows:

A. The capital stock of the Apex Company, party of the second part, to wit, twenty-five (25) shares of the par value of one hundred dollars (\$100) each, shall be convertible into twenty shares of the preferred stock of such new corporation hereby formed on a pro rata basis. B. The stock issued by the Cluett Company, party of the first part, as common stock, to wit, one hundred and twenty thousand (120,000) shares of the par value of one hundred dollars (\$100) each, shall be convertible into the common stock of the new Corporation hereby formed on the basis of one and one-half shares for each share. C. The stock issued by the said Cluett Company as preferred stock and outstanding in the hands of its stockholders (other than the Company itself) to wit, fifty-nine thousand nine hundred and eighty-five (59,985) shares of the par value of one hundred dollars



(\$100) each, shall be convertible into the preferred stock of such new Corporation hereby formed on the basis of one and one-third shares for each share; provided, however, that the preferred stock of the Cluett Company owned by it and held in its Treasury shall

1164 not be regarded as outstanding stock or share in such distribution and the same upon the completion of the consolidation

shall be canceled. D. Upon the presentation and surrender of any outstanding certificates of stock issued by either of said constituent corporations certificates of stock of the new Corporation hereby formed shall be issued to the holders of the certificates so presented and surrendered on the basis and of the class of stock to which such holders are respectively entitled as above set forth; provided, however, that if any such holder should be entitled as part of his distributive share on conversion to a fraction of a share of stock, the new Corporation hereby formed may issue to him scrip, or other evidence, representing such fraction which shall be exchangeable by him for a full share of stock when presented with other fractions totaling a full share, and if any such scrip shall be issued the same shall be subject to the same conditions and provisions as govern any scrip that may be issued under the provisions of subdivision (b) of the foregoing Eighth Article hereof. E. The preferred stock of the new Corporation hereby formed not required for the conversion of the capital stocks of the two constituent Companies as above provided, towit, two million dollars (\$2,000,000) of such preferred stock, shall not be issued to the stockholders of the said constituent Companies, but shall be reserved for future issue and disposition, from time to time, by the said new Corporation in such manner as the Board of Directors thereof may determine and as may be authorized by law.

Tenth. That the business of such new Corporation is to be carried on in such places outside of the State of New York as the constituent corporations, parties to this agreement, or either of them, shall have been organized for the purpose of carrying the same on, towit: In the various Towns and Counties of the several States and the Territorial Possessions of the United States and in all foreign countries.

In testimony whereof, the respective Corporations, parties hereto of the first and second part, have executed this agreement in duplicate, have hereunto caused their respective corporate names 1165 to be subscribed by their respective Presidents, and have caused their respective corporate seals to be affixed hereunto, attested by their respective Secretaries, and in further Testimony whereof this agreement has been signed by a majority of the respective Boards of Directors of the said Corporations, all the day and year first above written.

CLUETT, PEABODY & CO.,  
By F. F. PEABODY, *President*.

Attest:

[CORPORATE SEAL.]

G. A. CLUETT, *Secretary*.



F. F. PEABODY,  
 HOWARD S. KENNEDY,  
 ROBERT CLUETT, JR.,  
 G. A. CLUETT,  
 E. H. CLUETT,  
 A. E. CLUETT,  
 A. GILLESPIE,  
 C. S. DEAN,

*Directors of Cluett, Peabody & Co.*  
 THE APEX COLLAR & SHIRT COM-  
 PANY, INC.,

By GEORGE W. JAQUES, *President.*

Attest:

[CORPORATE SEAL.]

FREDERICK WM. KOBBE, *Secretary.*

GEORGE W. JAQUES,  
 FREDERICK WM. KOBBE,  
 KNOWLTON DURHAM,  
 GEORGE E. HITE, JR.,

*Directors of The Apex Collar & Shirt Company, Inc.*

STATE OF NEW YORK,  
*County of Rensselaer, ss:*

On this 23rd day of December, nineteen hundred and twelve before me personally came F. F. Peabody, to me known, who being by me duly sworn did depose and say that he resides in the City of Albany, County of Albany, State of New York; that he is the President of Cluett, Peabody & Co., one of the Corporations described in 1166 and which executed the foregoing instrument; that he knows the seal of said Corporation; that the seal affixed to said instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said Corporation and that he signed his name thereto as President by like order.

[SEAL.]

EVERETT M. SNYDER,  
*Notary Public.*

STATE OF NEW YORK,  
*City and County of New York, ss:*

On this 20th day of December, nineteen hundred and twelve before me personally came George W. Jaques, to me known, who being by me duly sworn, did depose and say: that he resides in The City of New York, State of New York; that he is the President of The Apex Collar & Shirt Company, Inc., one of the Corporations described in and which executed the foregoing instrument; that he knows the seal of said Corporation; that the seal affixed to said instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said Corporation and that he signed his name thereto as President by like order.

[SEAL.]

SINCLAIR HAMILTON,  
*Notary Public, No. 16. New York County.*  
*Register's No. 4033.*

STATE OF NEW YORK,  
County of Rensselaer, ss:

On this 23rd day of December, nineteen hundred and twelve, before me personally came F. F. Peabody, Howards S. Kennedy, Robert Cluett, Jr., G. A. Cluett, E. H. Cluett, A. E. Cluett, A. Gillespie, C. S. Dean, to me personally known and known to me to be the persons who severally executed the foregoing instrument and severally duly acknowledged to me that they executed the same for the uses and purposes therein expressed.

[SEAL.]

EVERETT M. SNYDER,  
Notary Public.

STATE OF NEW YORK,  
City and County of New York, ss:

On this 20th day of December, nineteen hundred and twelve, before me personally came George W. Jaques, Frederick Wm. Kobbe, Knowlton Durham and George E. Hite, Jr., to me personally known and known to me to be the persons who severally executed the foregoing instrument and severally duly acknowledged to me that they executed the same for the uses and purposes therein expressed.

[SEAL.]

SINCLAIR HAMILTON,  
Notary Public, No. 16. New York County.  
Register's No. 4033.

STATE OF NEW YORK,  
County of Rensselaer, ss:

On this 23rd day of December, Nineteen hundred and twelve, before me personally came G. A. Cluett, who, being by me duly sworn, did depose and say: That he is the Secretary of Cluett, Peabody & Co., one of the corporations described in and which executed the foregoing instrument; that F. F. Peabody, Howard S. Kennedy, Robert Cluett, Jr., G. A. Cluett, E. H. Cluett, A. E. Cluett, A. Gillespie, C. S. Dean who signed and executed the said instrument are members of the Board of Directors of the said corporation and that said persons constitute a majority of all the members of said Board of Directors.

G. A. CLUETT.

Sworn to before me this 23rd day of December, 1912.

[SEAL.]

EVERETT M. SYNDER,  
Notary Public.

STATE OF NEW YORK,  
City and County of New York, ss:

On this 20th day of December, Nineteen Hundred and twelve, before me personally came Frederick Wm. Kobbe, who, being by me duly sworn, did depose and say: That he is the Secretary of The Apex Collar & Shirt Company, Inc., one of the corporations described in and which executed the foregoing instrument; that George W.

Jaques, Frederick Wm. Kobbe, Knowlton Durham and  
 1168 George E. Hite, Jr., who signed and executed the said instrument, are members of the Board of Directors of the said corporation and that said persons constitute a majority of all the members of said Board of Directors.

FREDERICK WM. KOBBE.

Sworn to before me this 31st day of December, 1912.

[SEAL.]

SINCLAIR HAMILTON,  
 Notary Public, No. 16, New York County,  
 Register's No. 4033.

The Apex Collar & Shirt Company, Inc.

*Affidavit of Mailing of Notice of Meeting.*

STATE OF NEW YORK,  
 County of New York, ss:

Frederick Wm. Kobbe, being duly sworn, says: That he is the Secretary of The Apex Collar & Shirt Company, Inc., a corporation organized under the Business Corporations Law of the State of New York; that on the 30th day of December, 1912, he deposited in the General Post Office at the Borough of Manhattan, City of New York, New York, a copy of the annexed notice to the stockholders of the said The Apex Collar & Shirt Company, Inc., contained in a securely closed, duly postpaid wrapper, directed to each stockholder of record of said Company at his last known Postoffice address.

FREDERICK WM. KOBBE.

Sworn to before me this 31st day of December, 1912.

[SEAL.]

FRANK K. HOFFMAN,  
 Notary Public, No. 128, New York County,  
 Register's No. 3070.

The Apex Collar & Shirt Company, Inc.

*Notice of Stockholders' Meeting.*

Notice is hereby given that a special meeting of the stockholders of The Apex Collar & Shirt Company, Inc., will be held at twelve o'clock noon on the 18th day of January, 1913, at the principal office of the Company, No. 49 Wall Street, in the City of New York, and that the object of said meeting is to consider the approval of an agreement of consolidation entered into and made between the said The Apex Collar & Shirt Company, Inc., and Cluett, Peabody & Co., pursuant to resolutions of their respective Board of Directors, and, if approved, to take such action in the premises as may be necessary.

Dated, New York, December 24th, 1912.

FREDERICK WM. KOBBE, *Secretary.*

*Affidavit of Publication.*

STATE OF NEW YORK,  
County of Rensselaer, ss:

Robert B. Waters of the City of Troy, county of Rensselaer and State of New York, being duly sworn, says that he is principal clerk in the office of the Troy Daily Times, a newspaper printed and published in the city and county aforesaid; and that the Notice, of which the annexed is a printed copy, has been regularly published in the Troy Daily Times six times in each week for twelve times successively, commencing on the 31 day of Dec. last past.

ROBERT B. WATERS.

Sworn and subscribed to, before me, this 29th day of Jan., 1913.

WM. B. WILSON,  
Notary Public, Rensselaer Co., N. Y.

The Apex Collar & Shirt Company, Inc.

*Notice of Stockholders' Meeting.*

Notice is hereby given that a special meeting of the stockholders of The Apex Collar and Shirt Company, Inc., will be held at twelve o'clock noon on the 18th day of January, 1913, at the principal office of the Company, No. 49 Wall Street, in the City of New York, and that the object of said meeting is to consider the approval of an agreement of consolidation entered into and made between the said The Apex Collar and Shirt Company, Inc., and  
1170 Cluett, Peabody & Co. pursuant to resolutions of their respective Boards of Directors and, if approved, to take such action in the premises as may be necessary.

Dated New York, December 24th, 1912.

FREDERICK WM. KOBBE, *Secretary.*

STATE OF NEW YORK,  
County of Rensselaer, ss:

Chas. A. MacArthur of Troy, County of Rensselaer, and State of New York, being duly sworn, says that he is the Advertising Manager of the Troy Budget, a newspaper printed and published in the City and County aforesaid, and that the annexed notice has been regularly published in the Troy Budget two times, once in each week for two weeks successively, commencing on the 5th day of Jan. last past.

C. A. MACARTHUR.

Sworn and subscribed to before me this 13th day of Jan'y, 1913.

[SEAL.]

ALBERT A. McNAUGHTON,  
Notary Public.

## The Apex Collar &amp; Shirt Company (Inc.).

*Notice of Stockholders' Meeting.*

Notice is hereby given that a special meeting of the stockholders of The Apex Collar & Shirt Company (Inc.), will be held at twelve o'clock noon on the 18th day of January, 1913, at the principal office of the company, No. 49 Wall Street, in the City of New York, and that the object of said meeting is to consider the approval of an agreement of consolidation entered into and made between the said The Apex Collar & Shirt Company (Inc.), and Cluett, Peabody & Co., pursuant to resolutions of their respective Boards of Directors and, if approved to take such action in the premises as may be necessary.

Dated, New York, December 24th, 1912.

FREDERICK WM. KOBBE, *Secretary.*

STATE OF NEW YORK,

*City and County of New York, ss:*

Joseph F. Macdonald, being duly sworn says that he is 1171 the principal clerk of the Publisher of The New York Times, a daily newspaper printed and published in the City and County of New York; that the advertisement hereto annexed has been regularly published in the said The New York Times for fourteen successive Times commencing on the 28th day of Dec., 1912, and also on ———, 191—.

JOSEPH F. MACDONALD.

Sworn to before me this Jan. 10th, 1913.

[SEAL.]

EUGENE C. MAUBORGNE,

*Notary Public, Queens County.*

Certificate filed in New York County.

The Apex Collar & Shirt Company, Inc.

*Notice of Stockholders' Meeting.*

Notice is hereby given that a special meeting of the stockholders of The Apex Collar & Shirt Company, Inc., will be held at twelve o'clock noon on the 18th day of January, 1913, at the principal office of the Company, No. 49 Wall Street, in The City of New York, and that the object of said meeting is to consider the approval of an agreement of consolidation entered into and made between the said The Apex Collar & Shirt Company, Inc., and Cluett, Peabody & Co., pursuant to resolutions of their respective Boards of Directors and, if approved, to take such action in the premises as may be necessary.

Dated, New York, December 24th, 1912.

FREDERICK WM. KOBBE, *Secretary.*

(Endorsed:) In the matter of Affidavit of Publication in The New York Times New York City.

*Sworn Copy of Proceedings of Special Meeting of Stockholders of Cluett, Peabody & Co., Approving Consolidation Agreement.*

I, C. A. Cluett, Secretary of a Special Meeting of the Stockholders of Cluett, Peabody & Co., held on the 28th day of January, 1913, and thereupon duly adjourned until the 31st day of January, 1913, and upon that day further adjourned until the 3rd day of 1172 February, 1913, do hereby certify that the following is a true and complete copy of the proceedings of the said meeting and of the proceedings covering the calling and noticing thereof, namely:

The said special meeting was held at the office of the Company, in the City of Troy, State of New York, on the 28th day of January, 1913, at two o'clock in the afternoon, for the purpose of submitting to the stockholders of said Cluett, Peabody & Co., and considering the approval of, the annexed agreement, bearing date the 20th day of December, 1912, for the consolidation of said Cluett, Peabody & Co., with The Apex Collar & Shirt Company, Inc., under the name of Cluett, Peabody & Co., Inc.

The said special meeting was called pursuant to order of the Board of Directors of the Company upon notice of at least two weeks, specifying the time, place and object thereof, addressed to each stockholder of the Company at his last known post-office address and deposited in the post-office postage prepaid, and published for at least two successive weeks in newspapers published and circulating in the City of Troy and County of Rensselaer, in which City and County the said Cluett, Peabody & Co. has its principal place of business, and in a newspaper published and circulating in the City and County of New York in which City and County the said The Apex Collar & Shirt Company has its principal place of business.

Pursuant to the notice aforesaid the stockholders of said Cluett, Peabody & Co. met at the place and on the day and hour specified therein.

There were present at such meeting in person or by proxy stockholders owning all the issued and outstanding capital stock of said Cluett, Peabody & Co.; to wit, the owners of 180,000 shares out of a total issued and outstanding amount of 180,000 shares.

The meeting organized by the election of F. F. Peabody, as Chairman, and G. A. Cluett, the undersigned, as Secretary.

The Chairman of the meeting submitted affidavits showing that notice of the meeting, addressed and deposited as aforesaid, 1173 had been duly served on each stockholder of the Company and had been duly published in the "New York Times," County of New York, every day for at least two successive weeks preceding the meeting, in the "Troy Daily Times," City of Troy and County of Rensselaer, every day for at least two successive

weeks preceding the meeting (except Sundays on which days the said newspaper is not published) and in the "Troy Budget," City of Troy and County of Rensselaer, on each of the Sundays of the two successive weeks during which the said notice was being published in the "Troy Daily Times" as aforesaid.

Hereto annexed are the affidavits submitted to the meeting showing the service and publication of the notice as aforesaid.

Counsel having requested further time within which to prepare the formal matters incident to the purpose of the meeting, it was, upon motion, unanimously resolved that the meeting be adjourned until the 31st day of January, 1913, at the same hour and place.

Pursuant to the adjournment the meeting reconvened on the said 31st day of January, 1913, at the principal office of the Company, in the City of Troy, New York.

There were present at such adjourned meeting in person or by proxy stockholders owning all the issued and outstanding capital stock of the Company; to wit, the owners of 180,000 shares out of a total issued and outstanding amount of 180,000 shares.

Mr. F. F. Peabody continued as Chairman, and Mr. G. A. Cluett, the undersigned, as Secretary of the meeting.

Counsel having requested further time within which to prepare the formal matter incident to the purpose of the meeting, it was, upon motion, unanimously resolved that the meeting be adjourned until the 3rd day of February, 1913, at the same hour and place.

Pursuant to the adjournment the meeting reconvened on the 3rd day of February, 1913, at the principal office of the Company, in the City of Troy, New York.

1174 There were present at such adjourned meeting in person or by proxy stockholders owning all the issued and outstanding capital stock of the Company; to wit, the owners of 180,000 shares out of a total issued and outstanding amount of 180,000 shares.

Mr. F. F. Peabody continued as Chairman, and Mr. G. A. Cluett, the undersigned, as Secretary of the meeting.

The Chairman then submitted and read to the meeting the minutes of the meeting of the Board of Directors of the Company at which the annexed agreement was approved, its execution authorized and the Secretary of the Company directed to call the meeting of stockholders for the purpose of considering the approval thereof.

The annexed agreement, executed by the corporate parties thereto under their respective corporate seals and signed by a majority of their respective Boards of Directors, was thereupon submitted to the meeting.

After being read and considered a vote was taken by ballot upon the question of approving or rejecting the said agreement.

The said ballots were duly cast in person or by proxy, and upon a canvass of such ballots, which canvass was duly made by Tellers elected by the meeting for the purpose, it was found that the votes of stockholders owning all of the issued and outstanding capital stock of the Company (to wit 180,000 shares) had been cast in favor of the approval of the said agreement of consolidation and of all the

terms, provisions and conditions thereof, and that no votes had been cast against the approval thereof.

Thereupon said agreement of consolidation, more than two-thirds in amount of the capital stock of the Company having voted in favor thereof, was declared duly approved and adopted and, after adopting on unanimous consent a resolution approving and ratifying all past acts of the officers and directors of the Company, the meeting adjourned.

In witness whereof, I the Secretary of the said meeting,  
1175 have made, signed and sworn to the foregoing copy of proceedings in duplicate this 3rd day of February, 1913.

[CORPORATE SEAL.]

G. A. CLUETT, *Secretary*.

STATE OF NEW YORK,

*County of Rensselaer, ss:*

G. A. Cluett, being duly sworn, deposes and says:

That he was elected to act, and did act, as Secretary of a special meeting of the stockholders of Cluett, Peabody & Co. held for the purpose of considering the annexed agreement for the consolidation of said Company with The Apex Collar & Shirt Company, dated December 20th, 1912; that the foregoing is a copy of the proceedings of said meeting; that said copy is in all respects, a correct copy of such proceedings and of all the proceedings of said meeting and that notice of said meeting was given and published pursuant to statute as in said copy of proceedings set forth. I further depose and say that the total authorized, issued and outstanding capital stock of said Cluett, Peabody & Co. is 180,000 shares of the par value of eighteen million (\$18,000,000) dollars.

G. A. CLUETT.

Sworn to before me this 3rd day of February, 1913.

[SEAL.]

EVERETT M. SNYDER.

*Notary Public.*

Cluett, Peabody & Co. and the Apex Collar & Shirt Company, Inc.

*Consolidation Agreement.*

Dated December 20, 1912.

This agreement entered into and made this 20th day of December, one thousand nine hundred and twelve, between Cluett, Peabody & Co. (hereinafter referred to as the "Cluett Company"), party of the first part, and The Apex Collar & Shirt Company, Inc. (hereinafter referred to as the "Apex Company"), party of the second part, under the corporate seals of said corporations, witnesseth:

That Cluett, Peabody & Co., said party of the first part, is a corporation organized under the Business Corporations Law  
1176 of the State of New York for the purpose of carrying on the manufacture, sale and disposition of shirts, collars, cuffs, waists, night robes, pajamas and all other articles of apparel.



That The Apex Collar & Shirt Company, Inc., said party of the second part, is a corporation also organized under the Business Corporation Law of the State of New York for the purpose of carrying on business of the same or of a similar nature as the business of the said Cluett Company, to wit: the manufacture, purchase, sale and otherwise dealing in and disposing of shirts, collars, cuffs, waists, night robes, pajamas and other articles of apparel.

Now, therefore, in consideration of the mutual covenants and agreements herein contained, the said parties hereto do hereby merge and consolidate such corporations into a single corporation under and in pursuance of the laws of the State of New York in such case made and provided, and by these presents they do hereby covenant and agree upon and prescribe the terms and conditions of such consolidation and the mode of carrying the same into effect, which said terms and conditions and mode of carrying the same into effect they mutually covenant and agree to observe and perform as follows, to wit:

First. That the name of the Corporation hereby formed by such consolidation shall be Cluett, Peabody & Co., Inc.

Second. That the number of Directors who shall manage its affairs shall be fourteen (14).

Third. That the names and postoffice addresses of the Directors of such new Corporation for the first year are as follows, to wit:

Names.	Post-Office addresses.
F. F. Peabody.....	Troy, New York.
H. S. Kennedy.....	Troy, New York.
Robert Cluett, Jr.....	Troy, New York.
G. A. Cluett.....	Troy, New York.
E. Harold Cluett.....	Troy, New York.
C. A. Culver.....	No. 385 Fourth Ave., The City of New York, New York.
1177 A. E. Cluett.....	Troy, New York.
A. Gillespie.....	Troy, New York.
C. H. Gray.....	No. 385 Fourth Ave., The City of New York, New York.
C. S. Dean.....	Troy, New York.
W. H. Titus.....	No. 512 South Fifth Ave., Chi- cago, Illinois.
H. P. Statzell.....	No. 1211 Arch St., Philadelphia, Pennsylvania.
N. A. Flood.....	No. 44 West 44th St., The City of New York, New York.
Geo. L. Nichols.....	Katonah, Westchester County, New York.

Fourth. That the term of existence of such new Corporation shall be fifty years.

Fifth. That the names of the Towns and Counties in which the operations of such new Corporation are to be carried on are the County of Rensselaer in the State of New York, the various other Towns and Counties of the State of New York and of the several

States and Territorial Possessions of the United States and the Towns, Counties or other subdivisions of all foreign countries.

Sixth. That the names of the City and County in the State of New York in which the principal place of business of such new Corporation is to be situated are the City of Troy and County of Rensselaer.

Seventh. That the amount of the capital stock of such new Corporation is to be twenty-eight million dollars (\$28,000,000) of which amount eighteen million dollars (\$18,000,000) is to be common stock and ten million dollars (\$10,000,000) is to be preferred stock.

Eighth. That the number of shares into which such capital stock is to be divided is two hundred and eighty thousand (280,000) of the par value of one hundred dollars (\$100) each and of said number of shares one hundred thousand (100,000) thereof are to be preferred stock and one hundred and eighty thousand (180,000) thereof are to be common stock:

(a) The holders of the preferred stock shall be entitled to receive, when and as declared, from the surplus profits of the corporation, dividends at the rate of seven per centum per annum and no more, payable quarter-yearly on the first days of January, April, July and October in each year. Dividends on the preferred stock shall be cumulative from the first day of January, 1913, and shall be payable before any dividends on the common stock shall be paid or set apart, so that if in any year dividends amounting to the full seven per centum shall not have been paid on the preferred stock, the deficiency shall be paid before any dividends shall be paid or set apart for the common stock.

(b) The Company shall annually, on or before the thirty-first days of December in each of the years 1916, 1917, 1918, 1919, 1920, out of the surplus profits of the Company, if sufficient after all cumulated and defaulted dividends (if any) upon said preferred stock shall have been paid or set apart, acquire, by purchase thereof in such manner as the Board of Directors may determine from time to time, but at not to exceed one hundred and twenty five dollars (\$125) per share, plus accrued and unpaid dividends thereon, at least one per centum of the largest amount in par value of said preferred stock that shall have been at any one time issued and outstanding, and on or before the thirty-first day of December, 1921, and on or before the thirty-first day of December in each and every year thereafter (until all the preferred stock shall have been retired) shall, upon the conditions and in the manner above specified, acquire two per centum of the largest amount in par value of said preferred stock that shall have been, at any one time issued and outstanding. If in any year the Company shall fail to acquire by purchase as aforesaid all, or any part, of the amount of the preferred stock hereinbefore provided to be purchased by it on or before the thirty-first day of December in any such year, it shall set aside, but only out of such surplus profits, on or before the thirty-first day of December in each such year, an amount, which, taken at one hundred and twenty-five dollars (\$125) per share and all unpaid and accrued dividends thereon, shall be sufficient to redeem an amount of preferred stock equal to the amount which it shall so have failed to purchase. The fund so set aside shall be used to acquire

preferred stock by purchase thereof in such manner as the Board of Directors may determine whenever purchasable, at not to exceed one hundred and twenty-five dollars (\$125) per share, plus accrued and unpaid dividends thereon; and, whenever said fund shall be sufficient to redeem at least ten per centum in amount of the preferred stock then outstanding at one hundred and twenty five dollars (\$125) per share, plus accrued and unpaid dividends thereon, said fund shall be used for the redemption of preferred stock accordingly. Whenever preferred stock is redeemed it shall, at the option of the Board of Directors, be redeemed in either of the following methods: (1) by lot or (2) by redeeming such portion of the preferred stock held by each preferred stockholder as the total amount of said preferred stock then called for redemption shall bear to the total amount of preferred stock then outstanding. The Board of Directors shall have power and authority to prescribe the manner in which, and the notice, terms and conditions upon which, preferred stock shall be redeemed from time to time, and shall have power to, among other things, cause the Company to issue scrip representing a fraction of a share of stock and to deprive the owner or holder of such scrip of any voting power and of the right to receive any dividends thereon, provided that any such scrip shall be convertible together with sufficient other scrip into full share certificates of stock, which certificates shall, upon being issued, entitle the holder thereof to receive such dividends as have theretofore accrued and been paid on other outstanding stock of the same class but have not been paid to the holders of such scrip. If in any year the Company shall fail to purchase the amount of preferred stock hereinbefore provided to be purchased in any such year, or shall fail to set aside a sum equal to the difference between the amount of preferred stock purchased during such year and an amount sufficient to purchase the amount of such preferred stock hereinbefore provided to be purchased 1180 or redeemed in respect of such year at one hundred and twenty five dollars (\$125) per share, and unpaid and accrued dividends, the deficiency (before any dividend on the common stock shall be paid or set apart) shall be made good out of the surplus profits in subsequent years; and, if in any year the Company shall purchase or acquire an amount of preferred stock in excess of that hereinbefore provided to be acquired by it for such year or shall set aside an amount in cash in excess of the amount required to be set aside for such year, the obligations of the Company with respect to the acquisition, retirement or redemption of preferred stock and the setting aside of funds therefor, as hereinbefore provided, in subsequent years shall be reduced accordingly.

(c) Any funds set aside as aforesaid for the acquisition, retirement or redemption of preferred stock may be used for the payment of dividends on the preferred stock, provided there are no other funds of the Company available for that purpose, and, provided further, that all encroachments upon or arrears in said funds shall be first made good before any dividends shall be paid or declared on the common stock.

(d) Subject to the foregoing provisions, and not otherwise, such dividends (payable either in cash, common stock or otherwise) as

may be determined by the Board of Directors, may be declared and paid on the common stock from time to time out of the remaining surplus profits of the Company; and the Board of Directors shall have power, from time to time, to fix and determine and to vary the amount of the working capital of the Company, and, subject to the provisions of the foregoing subdivision (b), to direct and determine the use and disposition of any surplus profits of the Company, over and above the capital stock paid in.

(e) The amount of preferred stock shall not be increased, nor shall any stock having equal or superior preferences or priorities over said preferred stock be authorized or issued, unless such  
1181 increase or such issue shall have been previously authorized by the consent of at least three-fourths in interest of the then issued and outstanding stock of the Company of each class (both preferred and common) given separately in person or by proxy at a meeting specially called for that purpose.

(f) No mortgage, whether real estate or chattel, upon any part of the real or personal property, assets, effects, undertaking or goodwill of the Company shall be created or be valid or effective, unless the same shall have been previously authorized by the consent of the holders of at least three-fourths in interest of each class of outstanding stock of the Company (both preferred and common) given separately in person or by proxy, either in writing or at an annual meeting or at a special meeting called for that purpose; but this prohibition shall not be deemed or construed to apply to, nor shall it operate to prevent, the giving of purchase money mortgages or other purchase money liens on property to be hereafter acquired by the Company, or the acquisition of property subject to mortgages, liens and encumbrances thereon then existing.

(g) Upon any dissolution, liquidation, merger or consolidation of the Company, whether voluntary or involuntary (except in the event of insolvency or bankruptcy) or upon any distribution of capital, no sum whatsoever shall be paid to, nor shall any assets whatsoever be distributed among, the holders of the common stock, until there shall have been paid to the holders of the preferred stock one hundred and twenty five dollars (\$125) per share and the amount of all unpaid and accrued dividends thereon; and, in the event of any dissolution or liquidation of the Company, by reason of its insolvency or bankruptcy, there shall be paid to the holders of the preferred stock the par value thereof and the amount of all unpaid and accrued dividends thereon before any sum shall be paid to or any assets distributed among the holders of the common stock. After such payment to the holders of the preferred stock, all remain-  
1182 ing assets and funds of the Company shall, in any of the above events, be paid to the holders of the common stock, according to their respective shares.

(h) The entire voting power for the election of Directors shall be vested in the common stock, except as in this paragraph otherwise provided. The preferred stock shall have no voting power in the election of Directors unless and until four quarterly dividends payable thereon shall be in default. Immediately upon the hap-

pening of such event, and thereafter until such defaults and all defaults subsequent thereto shall have been made good, the voting power for the election of directors shall be vested exclusively in the preferred stock. However, if and when the defaulted dividends shall thereafter be paid, the voting power in the election for Directors shall again be vested exclusively in the common stock. The terms of office of all persons who may be Directors of the Company at the time when the voting power of the preferred stock shall accrue as herein provided shall terminate upon the election of their successors at a meeting of the preferred stockholders, which shall be held at any time thereafter upon notice similar to that provided in the By-laws for an annual meeting, at the request in writing of any holder of the preferred stock, addressed to the Secretary of the Company at its principal business office. Upon the termination of the voting power of the preferred stock at any time by reason of the payment of all defaulted dividends on such stock, the terms of office of all persons who may have been elected Directors of the Company by vote of the preferred stockholders shall terminate upon the election of their successors by the holders of the common stock at a meeting of stockholders, which shall be held at any time thereafter upon notice similar to that provided in the By-laws for an annual meeting, at the request, in writing, of any holder of the common stock, addressed to the Secretary of the Company at its principal business office. At all stockholders' meetings, except as otherwise herein expressly provided, each share of stock of the Company (both preferred and common) shall be entitled to one vote.

Ninth. That the manner of distributing such capital stock 1183 of such new Corporation among the holders of the respective Capital stocks of the respective parties hereto, shall be as follows:

A. The capital stock of the Apex Company, party of the second part, to-wit, twenty five (25) shares of the par value of one hundred dollars (\$100) each, shall be convertible into twenty shares of the preferred stock of such new corporation hereby formed on a pro rata basis. B. The stock issued by the Cluett Company, party of the first part, as common stock, to-wit, one hundred and twenty thousand (120,000) shares of the par value of one hundred dollars (\$100) each, shall be convertible into the common stock of the new Corporation hereby formed on the basis of one and one half shares for each share. C. The stock issued by the said Cluett Company as preferred stock and outstanding in the hands of its stockholders (other than the Company itself) to-wit, fifty nine thousand nine hundred and eighty-five (59,985) shares of the par value of one hundred dollars (\$100) each, shall be convertible into the preferred stock of such new Corporation hereby formed on the basis of one and one-third shares for each share; provided, however, that the preferred stock of the Cluett Company owned by it and held in its Treasury shall not be regarded as outstanding stock or share in such distribution and the same upon the completion of the consolidation shall be canceled. D. Upon the presentation and surrender of any outstanding certificates of stock issued by either of said constituent corporations certificates of stock of the new Cor-

poration hereby formed shall be issued to the holders of the certificates so presented and surrendered on the basis and of the class of stock to which such holders are respectively entitled as above set forth; provided, however, that if any such holder should be entitled as part of his distributive share on conversion to a fraction of a share of stock, the new Corporation hereby formed may issue to him scrip, or other evidence, representing such fraction which shall be exchangeable by him for a full share of stock when presented

with other fractions totaling a full share, and if any such  
1184 scrip shall be issued the same shall be subject to the same conditions and provisions as govern any scrip that may be issued under the provisions of subdivision (b) of the foregoing Eighth Article hereof. E. The preferred stock of the new Corporation hereby formed not required for the conversion of the capital stocks of the two constituent Companies as above provided, to wit, two million dollars (\$2,000,000) of such preferred stock, shall not be issued to the stockholders of the said constituent Companies, but shall be reserved for future issue and disposition, from time to time, by the said new Corporation in such manner as the Board of Directors thereof may determine and as may be authorized by law.

Tenth. That the business of such new Corporation is to be carried on in such places outside of the State of New York as the constituent corporations, parties to this agreement, or either of them, shall have been organized for the purpose of carrying the same on, to wit: In the various Towns and Counties of the several States and the Territorial Possessions of the United States and in all foreign countries.

In Testimony Whereof, the respective Corporations, parties hereto of the first and second part, have executed this agreement in duplicate, have hereunto caused their respective corporate names to be subscribed by their respective Presidents, and have caused their respective corporate seals to be affixed hereunto, attested by their respective Secretaries, and in further Testimony whereof this agreement has been signed by a majority of the respective Boards of Directors of the said Corporations, all the day and year first above written.

[CORPORATE SEAL.]

CLUETT, PEABODY & CO.,

By F. F. PEABODY, *President*.

Attest:

G. A. CLUETT, *Secretary*.

F. F. PEABODY,  
HOWARD S. KENNEDY,  
ROBERT CLUETT, JR.,  
G. A. CLUETT,  
E. H. CLUETT,  
A. E. CLUETT,  
A. GILLESPIE,  
C. S. DEAN,

*Directors of Cluett, Peabody & Co.*

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[CORPORATE SEAL.]

THE APEX COLLAR & SHIRT  
COMPANY, INC.,  
By GEORGE W. JACQUES, *President*.

Attest:

FREDERICK WM. KOBBE, *Secretary.*GEORGE W. JAQUES,  
FREDERICK WM. KOBBE,  
KNOWLTON DURHAM,  
GEORGE E. HITE, JR.,*Directors of The Apex Collar & Shirt Company, Inc.*

STATE OF NEW YORK,

*County of Rensselaer, ss:*

On this 23 day of December nineteen hundred and twelve before me personally came F. F. Peabody, to me known, who being by me duly sworn did depose and say that he resides in the City of Albany, County of Albany, State of New York; that he is the President of Cluett, Peabody & Co., one of the corporations described in and which executed the foregoing instrument; that he knows the seal of said corporation; that the seal affixed to said instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said Corporation and that he signed his name thereto as President by like order.

[SEAL.]

EVERETT M. SNYDER,

*Notary Public.*

STATE OF NEW YORK,

*City and County of New York, ss:*

On this 20th day of December, nineteen hundred and twelve before me personally came George W. Jaques, to me known, who being by me duly sworn, did depose and say: that he resides in the City of New York, State of New York; that he is the President of The Apex Collar & Shirt Company, Inc., one of the Corporations described in and which executed the foregoing instrument; that he knows the seal of said Corporation; that the seal affixed to said instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said Corporation and that he signed his name thereto as President by like order.

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[SEAL.]

SINCLAIR HAMILTON,

*Notary Public, No. 16. New York County.**Register's No. 4033.*

STATE OF NEW YORK,

*County of Rensselaer, ss:*

On this 23 day of December nineteen hundred and twelve before me personally came F. F. Peabody, Howard S. Kennedy, Robert Cluett, Jr., G. A. Cluett, E. H. Cluett, A. E. Cluett, A. Gillespie, C. S. Dean, to me personally known and known to me to be the persons who severally executed the foregoing instrument and severally duly acknowledged to me that they executed the same for the uses and purposes therein expressed.

[SEAL.]

EVERETT M. SNYDER,

*Notary Public.*

STATE OF NEW YORK,  
*City and County of New York, ss:*

On this 20th day of December nineteen hundred and twelve before me personally came George W. Jaques, Frederick Wm. Kobbe, Knowlton Durham and George E. Hite, Jr., to me personally known and known to me to be the persons who severally executed the foregoing instrument and severally duly acknowledged to me that they executed the same for the uses and purposes therein expressed.

[SEAL.]

SINCLAIR HAMILTON,  
*Notary Public, No. 16, New York County.*  
*Register's No. 4033.*

STATE OF NEW YORK,  
*County of Rensselaer, ss:*

On this 23d day of December, Nineteen hundred and twelve, before me personally came G. A. Cluett, who, being by me duly sworn, did depose and say: That he is the Secretary of Cluett, Peabody & Co., one of the corporations described in and which executed the foregoing instrument; that F. F. Peabody, Howard S. Kennedy, Robert Cluett, Jr., G. A. Cluett, E. H. Cluett, A. E. Cluett, A. Gillespie, C. S. Dean who signed and executed the said instrument are members of the Board of Directors of the said corporation and that said persons constitute a majority of all the members of said Board of Directors.

G. A. CLUETT.

Sworn to before me this 23 day of December, 1912.

[SEAL.]

EVERETT M. SNYDER,  
*Notary Public.*

STATE OF NEW YORK,  
*City and County of New York, ss:*

On this 20 day of December, Nineteen Hundred and twelve, before me personally came Frederick Wm. Kobbe, who, being by me duly sworn, did depose and say: That he is the Secretary of The Apex Collar & Shirt Company, Inc., one of the corporations described in and which executed the foregoing instrument; that George W. Jaques, Frederick Wm. Kobbe, Knowlton Durham and George E. Hite, Jr., who signed and executed the said instrument, are members of the Board of Directors of the said corporation and that said persons constitute a majority of all the members of said Board of Directors.

FREDERICK WM. KOBBE.

Sworn to before me this 20th day of December, 1912.

[SEAL.]

SINCLAIR HAMILTON,  
*Notary Public, No. 16, New York County.*  
*Register's No. 4033.*



Cluett, Peabody &amp; Co.

*Affidavit of Mailing of Notice of Meeting.*

STATE OF NEW YORK,

*County of Rensselaer, ss:*

G. A. Cluett, being duly sworn, says: that he is the secretary of Cluett, Peabody & Co., a corporation organized under the Business Corporations Law of the State of New York; that on the 3rd day of January, 1913, he deposited in the General postoffice at the City of Troy, New York, a copy of the annexed notice to the stock-  
1188 holders of the said Cluett, Peabody & Co. contained in a securely closed, duly postpaid wrapper, directed to each stockholder of record of said company at his last known postoffice address.

G. A. CLUETT.

Sworn to before me this tenth day of January 1913.

[SEAL.]

EVERETT M. SNYDER,

*Notary Public.*

Cluett, Peabody &amp; Co.

*Notice of Stockholders' Meeting.*

Notice is hereby given that a special meeting of the stockholders of Cluett, Peabody & Co. will be held at 2 P. M. on the 28th day of January, 1913, at the principal office of the Company, in the City of Troy, New York, and that the object of said meeting is to consider the approval of an agreement of consolidation entered into and made between the said Cluett, Peabody & Co. and The Apex Collar & Shirt Company, Inc., pursuant to resolutions of their respective Boards of Directors and, if approved, to take such action in the premises as may be necessary.

Dated, Troy, New York, January 3rd, 1913.

G. A. CLUETT, *Secretary.**Affidavit of Publication.*

STATE OF NEW YORK,

*County of Rensselaer, ss:*

Robert B. Waters of the City of Troy, county of Rensselaer and State of New York, being duly sworn, says that he is principal clerk in the office of the Troy Daily Times, a newspaper printed and published in the city and county aforesaid: and that the Notice, of which the annexed is a printed copy, has been regularly published in the Troy Daily Times six times in each week for twelve times successively, commencing on the 3rd day of January last past.

ROBERT B. WATERS.

Sworn and subscribed to, before me, this 29 day of Jan. 1913.

WM. B. WILSON,  
Notary Public, Rensselaer Co., N. Y.

Cluett, Peabody & Co.

*Notice of Stockholders' Meeting.*

Notice is hereby given that a special meeting of the stockholders of Cluett, Peabody & Co. will be held at 2 P. M. on the 28th day of January, 1913, at the principal office of the Company, in the City of Troy, New York, and that the object of said meeting is to consider the approval of an agreement of consolidation entered into and made between the said Cluett, Peabody & Co. and The Apex Collar and Shirt Company, Inc., pursuant to resolutions of their respective Boards of Directors and, if approved, to take such action in the premises as may be necessary.

Dated, Troy, New York, January 3d, 1912.

G. A. CLUETT, *Secretary.*

STATE OF NEW YORK,

County of Rensselaer, ss:

Charles A. MacArthur, of Troy, County of Rensselaer, and State of New York, being duly sworn, says that he is the Adv. Manager of the Troy Budget, a newspaper printed and published in the City and County aforesaid, and that the annexed notice has been regularly published in the Troy Budget two times, once in each week for two weeks, successively, commencing on the 5th day of Jan. last past.

C. A. MACARTHUR.

Sworn and subscribed to before me this 29th day of Jan., 1913.

[SEAL.]

ALBERT A. McNAUGHTON,  
Notary Public.

Cluett, Peabody & Co.

*Notice of Stockholders' Meeting.*

Notice is hereby given that a special meeting of the stockholders of Cluett, Peabody & Co., will be held at 2 P. M. on the 28th day of January, 1913, at the principal office of the company, in the city of Troy, New York, and that the object of said meeting is to consider the approval of an agreement of consolidation entered into and made between the said Cluett, Peabody & Co., and The Apex Collar & Shirt Company (Inc.), pursuant to resolutions of their respective Boards of Directors and, if approved, to take such action in the premises as may be necessary.

Dated, Troy, New York, January —, 1913.

G. A. CLUETT, *Secretary.*

STATE OF NEW YORK,

*City and County of New York ss:*

Joseph F. Macdonald being duly sworn says he is the principal clerk of the Publisher of The New York Times, a daily newspaper printed and published in the City and County of New York; that the advertisement hereto annexed has been regularly published in the said The New York Times for fourteen successive Times commencing on the 12th day of Jan., 1913, and also on —, 191—.

JOSEPH F. MACDONALD.

Sworn to before me this Jan. 28th, 1913.

[SEAL.]

EUGENE C. MAUBORGNE,

*Notary Public, Queens County.*

Certificate filed in New York County.

Cluett, Peabody &amp; Co.

*Notice of Stockholders' Meeting.*

Notice is hereby given that a special meeting of the stockholders of Cluett, Peabody & Co., will be held at 2 P. M. on the 28th day of January, 1913, at the principal office of the Company, in the City of Troy, New York, and that the object of said meeting is to consider the approval of an agreement of consolidation entered into and made between the said Cluett, Peabody & Co., and The Apex Collar & Shirt Company, Inc., pursuant to resolutions of their respective Boards of Directors and, if approved, to take such action in the premises as may be necessary.

Dated, Troy, New York, January 3d, 1913.

G. A. CLUETT, *Secretary.*

(Endorsed:) In the Matter of Affidavit of Publication in The New York Times, New York City.

1191 (Endorsed:) Sworn Copy of Proceedings of Special Meeting of Stockholders of The Apex Collar & Shirt Company, Inc., Approving Consolidation Agreement. Tax for privilege of Excess of capital of this corporation \$4,998.75. Under Section 180, Chapter 62, Laws of 1909, As Amended paid to State Treasurer before filing. State of New York, Office of Secretary of State. Filed and recorded Feb. 4, 1913. Mitchell May, Secretary of State.

STATE OF NEW YORK,

*Office of the Secretary of State, ss:*

I have compared the preceding with the original agreement for the Consolidation of Cluett, Peabody & Co. with The Apex Collar & Shirt Company, Inc., forming Cluett, Peabody & Co., Inc., with the various certificates and affidavits thereto annexed, filed and recorded in this office on the 4th day of February, 1913, and do Hereby Cer-

tify the same to be a correct transcript therefrom and of the whole thereof.

Witness my hand and the seal of office of the Secretary of State, at the City of Albany, this twenty eighth day of September, one thousand nine hundred and fourteen.

[SEAL.]

JOSE SPIDGEON,  
*Second Deputy Secretary of State.*

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EXHIBIT No. 95.

12/6/13.

The Badders Co., Topeka, Kansas.

GENTLEMEN: Attached please find statement for \$835.61, which should require your immediate attention. We have been very lenient with you and allowed your account to run indefinitely. You should give the payment of this amount your immediate attention as I will be at this office up to and including Wednesday, Dec. 10th. I hope you will make it convenient to send us your check for this amount before I leave.

Yours truly,

CLUETT PEABODY & CO, INC.,  
By ———, *Auditor.*

EXHIBIT No. 96.

Spero, Michael Co., Inc.,  
Makers of Clothing.

Advisory Board.

J. Spero, President.

M. A. Davis.

A. Michael, V. President.

W. C. Woodard.

I. Haas, Treasurer.

S. Dreifus.

M. S. Davis.

A. M. Loeb, Secretary.

T. R. Cherry.

W. L. Boyd.

W. M. Longini.

J. Rosenzweig.

12, 14, 16 E. 14th St., 7, 9 E. 13th St., New York.  
Dec. 6, 1914.

Copy.

The Badders Company, Topeka, Kansas.

GENTLEMEN: Replying to yours of the 28th ult., we regret exceedingly we cannot recede from the position expressed in ours of the 25th ult.

Yours very truly,

SPERO-MICHAEL CO., INC.,  
Per ———.

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## EXHIBIT No. 97.

Stein-Bloch Smart Clothes.

George S. Badders, President.  
Seward R. Graham, Sec. Treas.

The Badders Company,  
Seventh and Kansas Avenue, Topeka, Kansas.

November Twenty-sixth, Nineteen Hundred Thirteen.  
Spero, Michael & Son, 836 Broadway, New York City.

GENTLEMEN: We find that we can use the blue serge suits we cancelled while in New York and you may include them in shipment. Please rush. The Stein-Bloch Company will vouch for our responsibility.

Yours very truly,

THE BADDERS COMPANY,  
By GEO. S. BADDERS.

G. S. B.—B.

## EXHIBIT No. 98.

(Envelope:) Addressed to Judge J. S. West, State Capital, Topeka, Kansas. (Return Card, Robinson, Marshall & Co., 701-703 Kansas Avenue, Topeka, Kansas.) Postmarked, Topeka, Kansas, Dec. 2, 2:30 P. M. 1913. (Bearing two cent stamp.)

## EXHIBIT No. 99.

Stein-Bloch Smart Clothes.

George S. Badders, President.  
Seward R. Graham, Sec. Treas.

The Badders Company,  
Seventh and Kansas Avenue, Topeka, Kansas.

December 1st, 1913.

DEAR JUDGE: I am returning note given me for stock in The Badders Clothing Company. I wish to relieve you from liability in this matter and ask that you send the stock by return mail. Please keep this matter confidential. I will explain to you personally when I see you.

Very truly yours,

GEO. S. BADDERS.

G. S. B.—B.

## EXHIBIT No. 100.

\$100.00.

TOPEKA, KANSAS, June 1st, 1913.

One year after date I promise to pay to George S. Badders One Hundred and No/100 Dollars at 7% per annum.

Non Negotiable.

J. S. WEST.

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## EXHIBIT No. 101.

In the District Court of the United States for the District of Kansas,  
First Division.

In Bankruptcy. No. —.

In the Matter of The Badders Clothing Company, Bankrupt.

To the Honorable John C. Pollock, Judge of the District Court of  
the United States for the District of Kansas:

(1) The petition of The Burnham-Munger-Root Dry Goods Company, a Missouri corporation of Kansas City, Missouri, and The Goodyear Rubber Company, a Missouri corporation, doing business at Kansas City, Missouri, and The Rice Stix Dry Goods Company, a Missouri Corporation of St. Louis, Missouri, respectfully shows:

(2) The Badders Clothing Company (hereinafter called The "Company") is a Kansas corporation, has had its principal place of business for the greater portion of the period of six months immediately next preceding the date of the filing of this petition at Topeka, in Shawnee County, Kansas, is engaged exclusively in the business of buying and selling merchandise for profit, owes debts to the amount of one thousand dollars and over and is insolvent.

(3) Petitioners are creditors of said company, having provable claims against it which amount in the aggregate to five hundred dollars and more. None of the petitioners have any security and none of the petitioners are entitled to priority of payment on their said claims within the meaning of Section 64-*b* of the bankruptcy law of 1898, nor has any of petitioners received a preference within the meaning of Section 64-*a-b* of such law, as amended.

(4) The claims of petitioners are each for merchandise sold and delivered to the Company on open account at its special instance and request. Said claims are just, correct, and wholly unpaid, and the amounts thereof are as follows:

1196 The Burnham-Munger-Root Dry Goods Company,	
no security .....	\$2,203.25
Goodyear Rubber Company, no security.....	\$322.61
Rice-Stix Dry Goods Company, no security.....	\$1,099.64
Total.....	\$.....

### First Act of Bankruptcy.

(5) On or about the 12th day of January, 1914, and within the period of four months immediately next preceding the date of the filing of this petition, the Company did, while insolvent, commit an act of bankruptcy in that on said date it did pay, out of its own cash assets, to the Topeka Edison Company, one of its then creditors, the sum of about eighty dollars with the intent to prefer said The Topeka Edison Company over its other creditors; that at the time of said payment, the said debt of the company to The Topeka Edison Company amounted to about eight- dollars and no more and was wholly a pre-existing unsecured indebtedness; that by means of said payment, the said claim of The Topeka Edison Company against the Company was fully discharged, and The Topeka Edison Company thereby received a preference over the other creditors of the Company.

### Second Act of Bankruptcy.

(6) That during the last of December, 1913, or the first of January, 1914, and within the period of four months immediately next preceding the date of the filing of this petition, the Company did, while insolvent, commit an act of bankruptcy in that at said time it did pay out of its own cash assets to the Goodenow Brookfield Company, one of its then creditors, the sum of about two hundred dollars with the intent to prefer the said Goodenow Brookfield Company over its other creditors; that at the time of said payment, the said debt of the Company to the Goodenow Brookfield Company amounted to about two hundred dollars and no more and was wholly a pre-existing unsecured indebtedness; that by means of said payment, the said claim of the Goodenow Brookfield Company  
1197 against the Company was fully discharged and the Goodenow Brookfield Company thereby received a preference over the other creditors of the Company.

### Third Act of Bankruptcy.

(7) That within the period of four months immediately next preceding the date of the filing of this petition, and while insolvent, the Company did convey, transfer, conceal, remove, and permit to be concealed and removed, a large portion of its property with the intent to hinder, delay and defraud its creditors. The facts relating to said act of bankruptcy are as follows:

(8) During the month of December, 1913, and the early part of January, 1914, the Company began and held a special sale of its merchandise at retail at excessively and ruinously low prices, and then realized from the sale of said merchandise many thousands of dollars in cash, the exact amount of which your petitioners do not know and therefore cannot state, but your petitioners aver that said Company and its officers claim to have realized in cash and as the net proceeds of said sale, at least the sum of thirty-eight thousand dollars. That during said period creditors of said company holding

valid claims aggregating over thirty thousand dollars have placed their claims in the hands of attorneys at Topeka, Kansas, for collection and payment on said claims and demands had been and is still refused, though a large portion of said indebtedness was then and is now matured.

(9) Petitioners state that notwithstanding the pressure aforesaid brought to secure the payment of said claims, and the existence of other numerous and large claims of creditors of the Company, the Company has secreted and concealed a large portion of the proceeds of said special sale and refuses to disclose the same and is hiding the same with the intention of placing the same beyond the reach of its creditors and to prevent them from causing said money to be applied upon their debts, and do thereby hinder, delay and defraud its creditors. That as a part of said transaction and to more

1198 effectually conceal, secrete and hide a large portion of said cash assets from the creditors of said company, the controlling officers of said company with its knowledge and consent have bought, with a large quantity of the cash realized aforesaid, cashiers checks, drafts, and certificates of deposit, and have secreted, hidden, and concealed the same and have further concealed to the best of their ability the fact that they had purchased such cashiers' checks, drafts, or certificates of deposit; but notwithstanding said company realized many thousands of dollars from said special sale, they have deliberately refused to put any of it on deposit in banks or to disclose its whereabouts, and have kept its locality secret, and have kept the nature of its custody and the name of the person having custody thereof secret, all with the intent to prevent their creditors from reaching any of said funds by legal process and to hinder, delay and defraud them out of the payment of their claims against the Company out of said funds.

(10) Petitioners as a further part of this act of bankruptcy aver that the Company have surrendered and delivered to the controlling shareholders and officers of the Company a large quantity of the cash funds realized, as aforesaid, without any consideration therefor; that said controlling share holders and officers have appropriated the funds so received to their own use and benefit and that said company has permitted said officers and shareholders to so appropriate said funds to their own use and benefit without any consideration therefor.

(11) Petitioners further aver as a part of this act of bankruptcy that the company has surrendered and delivered to the controlling officers and shareholders of the Company and your petitioners believe, and therefore aver, to others to your petitioners unknown, a large quantity of the cash funds realized as aforesaid and has directed and has permitted said shareholders and officers to secrete, hide and conceal the same, in sundry and divers places and manners, all of which has been done, but the particulars of which  
1199 your petitioners cannot state for the reason that the Company its officers and shareholders have concealed the same from your petitioners and all their other creditors, and that said funds have been so hidden, concealed and secreted, with the



intent on the part of the Company and those participating in said acts to prevent the creditors of the Company from securing any payment on their claims out of said cash funds and to thereby hinder, delay and defraud said creditors.

(12) Petitioners as a further part of this act of bankruptcy aver that the said company has permitted its controlling officers and shareholders to take large quantities of the monies realized aforesaid, and buy up and purchase at their face value, a number of shares of stock, which had theretofore been issued to stockholders, that said shares of stock were purchased with said assets of the Company while the Company was insolvent and that the Company and its controlling officers knew at said time that it was insolvent.

(13) Petitioners as a further part of this act of bankruptcy aver that sometime in the months of November or December, 1913, or the early part of January, 1914, a more exact date of which your petitioners cannot give, the Company removed from its place of business at the corner of Seventh and Kansas Avenue in Topeka, Kansas, large quantities of merchandise, invoicing, as your petitioners believe and charge the fact to be, several thousand dollars. The company removed said merchandise from its place of business with the intent to make away with it and conceal it from their creditors and to prevent their creditors from causing any of said merchandise to be applied by legal process or otherwise towards the payment of the debts of said Company.

(14) Wherefore, petitioners pray that service of this petition, with a subpoena, may be made upon the said The Badders Clothing Company, as provided in said bankruptcy law of 1898, and that the Badders Clothing Company may be adjudged bankrupt within the purview of such law.

(15) Your petitioners further pray the court for an order  
1200 granting a special examination of the officers, stockholders, agents, and employes of The Badders Clothing Company and such other persons as petitioners may desire to examine, under oath as to the transactions, affairs and property of The Badders Clothing Company and the connection of the persons examined therewith and that all of the said persons be required to submit to such examination.

(16) Your petitioners further pray the Court for an order restraining The Badders Clothing Company, George S. Badders, W. A. Byers and all the agents, officers, stockholders and employes of The Badders Clothing Company and each and every person having control or custody of any of its property from in any wise transferring, or disposing of any of said property subject to the further order of the Court, but your petitioners do not pray that the Badders Clothing Company be restrained from conducting its business at retail and paying out of the proceeds the running expenses thereof in the usual and ordinary course.

(17) Your petitioners pray that pending the termination of this proceeding The Badders Clothing Company be required to keep full and complete records of all its business transactions and be required to stand ready to account to this Court therefor.

(18) And your petitioners pray for such other and further relief, orders and judgment as in the premises may be just, equitable and proper.

BURNHAM MUNGER ROOT D. G. CO.  
GOODYEAR RUBBER CO.  
RICE STIX DRY GOODS CO.

NEW & KRAUTHOFF,  
McCLINTOCK & QUANT,  
*Attorneys for Petitioners.*

UNITED STATES OF AMERICA,  
*State and District of Missouri, Jackson County, ss:*

1201 W. S. McClintock, being first duly sworn on his oath says; he is one of the attorneys for the petitioners above named; that he is authorized to verify this petition on behalf of the Rice Stix Dry Goods Company, one of said bankrupts; affiant does so verify said petition because petitioners' officers and agents are non-residents of and absent from the State of Kansas. Affiant has read the foregoing petition in Bankruptcy and the statements therein contained are true, as he verily believes.

W. S. McCLINTOCK.

Subscribed and sworn to before me this 20th day of January, 1914. My commission expires 4, 5, 17.

[SEAL.]

JAMES B. NOURSE,  
*Jackson County, Mo., Notary Public.*

UNITED STATES OF AMERICA,  
*State and District of Missouri, Jackson County, ss:*

W. C. Tevis, being first duly sworn on his oath says; he is the Credit Mgr. of the Burnham-Munger-Root Dry Goods Company, one of the petitioners named above; that he has read the foregoing petition in bankruptcy and the statements therein contained are true as he verily believes.

W. C. TEVIS.

Subscribed and sworn to before me this 21st day of January, 1914. My Commission expires 4, 5, 17.

[SEAL.]

JAMES B. NOURSE,  
*Notary Public, Jackson County, Mo.*

UNITED STATES OF AMERICA,  
*State and District of Missouri, Jackson County, ss:*

Timothy Mulford, being first duly sworn on his oath says he is the Manager of the Goodyear Rubber Company, one of the petitioners named above; that he has read the foregoing petition in bankruptcy and the statements therein contained are true as he verily believes.

TIMOTHY MULFORD.

Subscribed and sworn to before me this 21st day of January, 1914. My commission expires 4, 5, 17.

[SEAL.]

JAMES B. NOURSE,  
*Notary Public, Jackson Co., Mo.*

(Endorsed:) No. 1757. In the Matter of The Badders Clothing Company, Bankrupt. Petition. Filed Jan. 21, 1914, at 11 A. M. Morton Albaugh, Clerk. New & Krauthoff, McClintock & Quant, Attorneys for Petitioners.

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## EXHIBIT No. 102.

In the District Court of the United States for the District of Kansas,  
First Division.

In Bankruptcy. No. —.

In the Matter of the Badders Clothing Company, Bankrupt.

*Order.*

The application of the petitioning creditors herein for a restraining order and for an order of special examination before adjudication in bankruptcy came on for hearing before the court in Kansas City in said District upon the petitions in bankruptcy filed herein, said petitioners appearing by their attorneys.

And the court having fully considered the application of the petitioners aforesaid, and the petitions in bankruptcy filed herein finds that the following order should be entered at this time.

Wherefore, it is by the court ordered that the application of the petitioning creditors for a special examination of the officers, stockholders, agents and employes of the Badders Clothing Company and such other parties as it desires to examine be, and the same is, hereby allowed.

J. G. Slonecker, Referee in Bankruptcy, of Topeka, Kansas, is hereby appointed as Special Master for the purpose of taking the testimony at said special examination and for the further purpose of hearing the application of the petitioning creditors for a restraining order herein and taking the testimony with reference thereto and he is empowered and authorized by this order to swear such witnesses as may be produced before him in the proceedings herein referred to him and to require said witnesses to testify, under oath, before him and to cause their testimony to be reduced to writing and he is further authorized to cause witnesses to be produced before him on citations issued by him or on subpoenas.

Said Referee is directed further to forthwith take the testimony on the application of the petitioning creditors for a restraining order herein and to make findings of facts and conclusions of law relating to such application for a restraining order and he is directed to, as expeditiously as possible, return into the office of the clerk of this court the testimony taken in the

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hearing of said matter together with his findings of facts, conclusions of law and recommendations as to whether said restraining order should be granted or refused, and the nature of the order which should be entered thereon.

It is by the Court further ordered that George S. Badders and W. A. Byers be and appear before J. G. Slonecker, as said Special Master, at his office at 701 Jackson Street in Topeka, Kansas, on Friday, the 23rd day of January, 1914, at 10 o'clock A. M., and then and there and at such other and further times as said Special Master shall order or direct, submit to full and complete examination, under oath, or affirmation, with reference to all the affairs and property of The Badders Clothing Company, and with reference to all transactions which they, or either of them at any time have had with The Badders Clothing Company or any of its property or with any other person relating to its assets and property.

And it is by the Court further ordered that all other persons upon whom the petitioning creditors shall cause a subpoena to be served or upon whom a citation issued by the Special Master herein therefor shall be served, be, and appear at said times and place before said Special Master and that they be and appear before said Special Master at such other and further times as he shall direct and order and that they and each of them at all such times and place submit to a full and complete examination, under oath or affirmation, with reference to the affairs and property of The Badders Clothing Company and their connection, if any, therewith, or the connection of any of the officers and stockholders, agents, employees of The Badders Clothing Company, and other persons therewith.

The Court further orders that the final hearing upon the application of the petitioning creditors for a restraining order be, 1205 and the same is hereby continued until the said Special Master has filed, as herein directed, the testimony in this proceeding and his findings of fact, conclusions of law and recommendations with the clerk of this court at which time the petitioning creditors or The Badders Clothing Company may at any time, upon notice, bring the matter of the application for said restraining order before the Court for final hearing and decision.

Provided, however, it is further by the Court hereby ordered that pending the final determination of the application of the petitioning creditors for a restraining order herein, The Badders Clothing Company, George S. Badders, W. A. Byers, and all the officers, agents, stockholders, employees of The Badders Clothing Company and any other persons having in their possession or control any property in which The Badders Clothing Company has any interest, be, and they are hereby restrained from in anywise disposing of or transferring said property or removing it from the place where it now is, except that they may put funds in the usual banking depositories on deposit and may conduct the business of The Badders Clothing Company at retail in the usual and ordinary course of business and may pay the usual and ordinary running expenses therefor.

Dated at Kansas City, Kansas, January 21, 1914.

JOHN C. POLLOCK, *Judge*.

(Endorsed:) #1757. In the Matter of The Badders Clothing Company, Bankrupt. Order. Filed Jan'y 21, 1914. Morton Albaugh, Clerk.

1206

## EXHIBIT No. 103.

In the District Court of the United States for the District of Kansas,  
First Division.

In the Matter of GEORGE S. BADDERS, Bankrupt.

In Bankruptcy. No. 1776.

To the Honorable John C. Pollock, Judge of the District Court of  
the United States for the District of Kansas:

(1) The petition of The Stein-Bloch Company, a New York corporation, doing business at Rochester, in the State of New York, respectfully shows:

(2) George S. Badders has had his principal place of business and his sole place of residence for the greater portion of the period of six months immediately next preceding the date of the filing of this petition in the City of Topeka, in Shawnee County, Kansas, is by occupation a merchant and the president and general manager of a mercantile corporation known as The Badders Clothing Company situated in Topeka in said county and state and said George S. Badders is not a person engaged in the tillage of the soil and is not a wage earner. But if it shall be found that said George S. Badders is a wage earner, all of which petitioner denies, then and in such event, petitioner avers that he is an individual who works for wages, salary or hire, at a rate of compensation exceeding one thousand five hundred dollars per year. Said George S. Badders is insolvent.

(3) The creditors of George S. Badders are and during all the times hereinafter mentioned were less than twelve in number.

(4) Petitioner is, and during all the times hereinafter mentioned was, a creditor of said George S. Badders, having a provable claim against him, which amounted during all said times and still amounts to five hundred dollars and more. Petitioner has no security for its

1207 said claim as hereinafter set forth except seventy five shares of the capital stock of The Badders Clothing Company, transferred to it by George S. Badders as collateral security for its said claim, but the said capital stock has no value of any kind whatever. Petitioner is not entitled to priority of payment on its said claim within the meaning of Section 64-b of the Bankruptcy Law of 1898, nor has petitioner received a preference within the meaning of Section- 64-a-b of such law as amended.

(5) The claim of petitioner is as follows: One note for twenty-five hundred dollars not set forth herein. On March 19th, 1913, George S. Badders for value received, executed and delivered to petitioner his two certain promissory notes, towit:

"TOPEKA, KANS., Mar. 19, 1913.

Six months after date I promise to pay to the order of Stein-Bloch Company \$2,500.00 Twenty Five Hundred No/100 Dollars at their office Rochester, N. Y. Value received with interest at 6 per cent per annum after date until paid.

Due Sep. 19, 1913.

GEO. S. BADDERS."

"TOPEKA, KANS., Mar. 19, 1913.

Six months after date I promise to pay to the order of Stein-Bloch Company \$2,500.00 Twenty Five Hundred No. 100 Dollars at their office Rochester, N. Y. Value received with interest at 6 per cent per annum after date until paid.

Due Sep. 19, 1913.

GEO. S. BADDERS."

George S. Badders has paid on said promissory notes the following sums on the following dates:

1913.		
March	19 to Notes.....	\$5000.00
May	1. By Payments .....	\$100.00
	31. ....	\$100.00
July	1. ....	\$100.00
	26. ....	\$100.00
Sept.	12. ....	\$100.00
Oct.	4. ....	\$100.00
Nov.	5. ....	\$100.00
		<hr/>
		700.00
		<hr/>
		\$4300.00

1208 The remainder of said notes, together with interest, is just, due, correct and wholly unpaid.

(6) Within the period of four months immediately next preceding the date of the filing of this petition George S. Badders did convey, transfer, conceal, remove and permit to be concealed and removed a large portion of his property with the intent to hinder, delay and defraud his creditors. The facts relating to said act of bankruptcy are as follows:

(7) During the months of December, 1913, or January or February, 1914, or all said times, the exact dates of which your petitioner cannot state more in detail, George S. Badders converted all his property, except such as he is entitled to claim as exempt under the laws of the State of Kansas, into currency, money, or negotiable bonds and like securities, and secreted, removed, and concealed same and will does so secrete and conceal the same and also permitted others, of your petitioners unknown, to remove and to secrete and conceal the same, all of which is still being done, with the intent and purpose on his part to hinder, delay and defraud his creditors, and with like intent said George S. Badders on or about February 25th, 1914,

either absconded or hid and concealed himself and his whereabouts all of which he still does, and secretly took with him a large portion if not the whole of the property so transferred, concealed and removed and secreted so that he might more effectually remove, conceal and secrete the same and thereby hinder, delay and defraud his creditors.

(8) Wherefore, petitioner prays that service of this petition with a subpoena may be made upon George S. Badders as provided in said bankruptcy law of 1898, and that George S. Badders may be adjudged bankrupt within the purview of such law.

THE STEIN-BLOCH CO., *Petitioner.*

McCLINTOCK & QUANT,

*Attorneys for Petitioner.*

UNITED STATES OF AMERICA,

*State and District of Kansas, Shawnee County, ss:*

1209 George C. Guggenheim, being first duly sworn on his oath, says: he is the General Manager of The Stein-Bloch Company, the petitioner above named, that he has read the foregoing petition in bankruptcy and the statements therein contained are true as he verily believes.

GEO. C. GUGGENMEIM.

Subscribed and sworn to before me this 5th day of March, 1914.  
My commission expires Oct. 9, 1915.

[SEAL.]

GRACE KOCHIELRIES,

*Notary Public.*

(Endorsed:) In the District Court of the United States for the District of Kansas, First Division. In the Matter of George S. Badders, Bankrupt. In Bankruptcy. Petition. Filed Mar. 5, 1914. At 4:45 P. M. Morton Albaugh, Clerk. McClintock & Quant, Attorneys for Petitioner.

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EXHIBIT No. 104.

*Daily Report of — — —, for Dec. 24, 1912.*

Sales.	Cash.	Charged.	Cash (last year).	Chg. (L. Yr.)
Men's Clothing . . . .	50.00	149.50		
Boys' and Children's Clothing . . . . .	38.23	13.15		
Furnishings . . . . .	445.45	204.44		
Hats and Caps . . . . .	.....	.....		
Leather Goods . . . . .	.....	.....		
Totals . . . . .	533.68	367.09		

## Cash Accounts.

Receipts.		Payments.	
Balance on hand Yesterday .....	1,191.35	Salaries & Wages....	1.25
Cash Sales for Today. ....	533.68	General Expense ....	45.15
Cash from Charged Accounts .....	67.85	Advertising .....	.....
		Deposited in Bank To-day .....	678.02
		Balance on hand To-day .....	1,068.16
Total .....	1,792.88	Total .....	1,792.88

## Bank Account.

Balance in Bank Yesterday .....	145.15
Deposited Today .....	678.02
Total .....	823.17

Check No.	To whom.	Mdse.	Expense.	Advertising.
"	"	655.78	25.10	25.20
"	"			
"	"			
"	"			

Gross Amount .....	Total Amount.
Discount .....	.....
Net amount .....	.....
Balance in Bank .....	117.09

## Purchases received:

Men's Clothing .....
Boys' and Children's Clothing .....
Hats and Caps .....
Furnishings .....
Leather Goods .....

134.15

## Inventory:

Mdse. on hand .....
Less Sales (at cost)...
Plus Purchases .....
Estimated Inventory..

(Signed)

THE BADDERS CO.



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EXHIBIT No. 105.

Stein Bloch Smart Clothes.

THE STEIN BLOCH CO.  
WHOLESALE TAILORS  
REGISTERED 1888.

This Label Marks the  
Smartest Ready-to-wear  
Clothes.

ROCHESTER, N. Y., April 14, 1913.

Mr. Geo. S. Badders, Topeka, Kansas.

My DEAR MR. BADDERS: I am in receipt of your favor of the 12th inst. Neither Mr. Stein nor myself ever met the gentleman to whom you refer, but from what we can learn he seems to be all right, and if he is personally satisfactory to you, he will be to us.

From the fact that we have the highest regard for the firm with whom he is now connected, and with whom we have been doing business for quite a number of years, we do not feel that we should advise you in the matter, as we would not care to in any way, shape or manner, act in any way detrimental to the interests of the parties in question. All we can say is, that the gentleman is entirely satisfactory to us.

Very truly yours,

GEO. C. GUGGENHEIM.

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EXHIBIT No. 106.

*Daily Report of The Badders Company for Nov. 29, 1913.*

Sales.	Cash.	Charged.	Cash (last year).	Charged (last year).
Men's Clothing .....	103.00			
Boys' and Children's Clothing .....	8.10			
Furnishings .....	109.88			
Hats and Caps, Leather Goods .....				
Total .....	220.98			

Cash Account.

Receipts:

Balance on hand Yesterday .....	715.26
Cash Sales for today...	220.98
Cash from Charged Accounts .....	159.02
Bills payable Bank of Topeka .....	2000.00
Total .....	3095.26

(Weather —.)

Payments:

Salaries and Wages....	348.34
General Expense.....	
Deposited in Bank Today .....	1976.67
Bal. on hand today....	770.25
	3095.26

## Bank Account.

Balance in Bank Yesterday..... 2,304.30  
 Deposited Today .....

Today —. Mdse. —. Expense —. Advertising —.

Check No. —. To whom —.

" " " "

Gross Amount —.

Total Amount —.

Discount —.

Net amount —.

Balance in Bank —.

Purchases received:

Inventory:

Men's Clothing .....	13.25	Mdse. on hand.....
Boys' and Children's		
Clothing .....		Less Sales (at cost).....
Furnishings .....		
Hats and Caps.....		Plus Purchases .....
Leather Goods .....		Estimated Inventory ....

1213 The significance of the column "Inventory," in the lower righthand corner, is unknown to many retail merchants. If you start this column at the time of your inventory, deducting from your stock on hand each day the amount of your total sales at cost and adding each day the amount of goods which you receive, it will give you a continuous inventory, and by keeping up this system you will not only know daily the amount of your stock but also the amount of our gross profits. Your net profits can then easily be ascertained at any time.

1214

EXHIBIT No. 107.

Rec'd May 16, 1913. The S. B. Co.

*Statement.*

The Badders Clothing Company, April 30th, 1913.

Capital stock .....	\$34,010.76
Accounts payable .....	27,294.31
Bills Payable .....	7,208.94
Interest and Discount.....	911.59
Merchandise .....	\$43,581.30
Accounts Payable .....	10,019.82
Fixtures .....	5,669.37
Expense .....	956.43

Freight and Express.....	428.46	
Advertising .....	1,103.73	
Light .....	193.02	
Insurance .....	196.21	
Rent .....	2,000.00	
Salary .....	5,064.81	
Cash Balance .....	212.45	
		<hr/>
	\$69,425.60	\$69,425.60

(Signed)

## Bills Payable—Merchandise (Itemized).

Stein-Bloch Company .....	\$11,509.43
Pioneer Suspender Co. ....	150.05
W. S. Peck & Co.....	903.50
J. B. Stetson Company.....	478.75
Rosenwald & Weil .....	30.70
M. Gimbel Co. ....	45.00
Kling Bros. ....	121.78
Goldwater & Co.....	131.00
J. Samuels Bros. ....	253.50
Rothschild Bros. ....	92.38
Burnham Hannah Munger .....	141.67
Brigham Hopkins .....	114.00
Calumet Shirt Co. ....	255.63
Dempster & Place.....	371.76
1215 Cohn Goldman .....	348.26
L. Heller & Co.....	15.64
J. Werner Co. ....	506.48
R. Kamber .....	641.00
Rose Bros. ....	452.50
Davis Merc. Co.....	203.11
Cluett Peabody Co. ....	729.47
Kahn Bros. ....	257.84
Alfred Decker & Cohn.....	1,158.35
Sweet-Orr .....	619.76
Eclipse Co. ....	27.00
Eagle Co. ....	86.75
Imperial Undr. Co.....	93.00
Townsend Grace Co.....	324.00
Central Knitting Co. ....	405.00
Earl Sternburg .....	147.00
Doninger Bros. ....	117.00
W. H. Kehrer .....	46.15
Marathon Underwear Co. ....	205.75
Belber Trunk Co.....	53.00
J. B. Kirchfield .....	123.00
Ely-Walker Co. ....	24.50
Empire Cap Co. ....	120.75

Ohlbaun Bros. ....	492.00
Sweet-Orr .....	205.38
Bill & Caldwell .....	191.65
Weingartner & Geberer .....	313.50
Alexander & Harris .....	106.88
H. C. Cohn Co. ....	126.81
L. Berger & Swartz .....	65.88
I. S. Pants Co. ....	116.75
Hargadine McKittrick Co. ....	121.63
Schloos Bros. ....	569.00
Ed Levy Co. ....	96.76
Lindhal Lavick Co. ....	65.67
Phillips-Jones Co. ....	624.77
1216 Sanders D. & R. Co. ....	10.50
Searl Mfg. Co. ....	177.88
Bonar-Phelps Co. ....	54.00
Bernstein Bros. ....	237.00
Schwartz & Jaffee .....	119.00
Chas. Alshuler Co. ....	83.25
Bordenheimer Undr. Co. ....	73.88
Michael Stern .....	309.00
Trimble Hat Co. ....	144.00
Richardson Dry Goods Co. ....	15.70
Robischon Peckam .....	39.38
Robert Reiss & Co. ....	322.80
J. R. Keizer Co. ....	81.52
Dent Alcroft Co. ....	77.00
Krien & Hubbard .....	8.40
Topken Co. ....	13.42
Onondago Indian .....	46.57
Gloversville Auto Glove Co. ....	62.37
Metropolitan R. C. Co. ....	28.50
Heidelberg Wolff .....	204.50
Cheney Bros .....	160.11
Geo. P. Ide .....	94.50
Altman Neckwear Co. ....	141.76
Cutter & Crossette .....	75.56
H. D. Lee Mfg. Co. ....	8.71
Topeka Woolen Mill Co. ....	61.80
Berliner Strauss & M. ....	109.91
Milwaukee Glove Co. ....	9.38
Shaw Knitting Co. ....	16.80
Williams Bros. ....	6.30

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\$27,294.31

1217

## EXHIBIT No. 108.

D. N. Graham, President. S. R. Graham, 1st Vice President.  
 W. E. McKnight, 2nd " "  
 T. E. Knight, Secretary. W. T. Hewitt, Treasurer.

Established 1891. Incorporated 1905.

Hiawatha, Kansas. Sabetha, Kansas. Auburn, Nebraska. Hebron,  
 Nebraska.

The Graham Clothing Company,  
 Clothing, Furnishings, and Merchant Tailoring.

HIAWATHA, KANSAS, Nov. 17, 1913.

The Badders Co., Topeka, Kansas.

GENTLEMEN: I herewith hand you my resignation as secretary and treasurer of The Badders Co. to take effect at once, being impossible to give my attention to this business in justice to you and myself. Please acknowledge receipt of same at once.

Yours truly,

SEWARD R. GRAHAM.

1218 STATE OF KANSAS,

*Wyandotte County, ss:*

I, Elizabeth La Bar, the official stenographer who reported the proceedings and testimony in the matter of an application for a continuance filed by the defendant in the above entitled case, and who reported the proceedings and testimony in the trial of the above entitled cause, hereby certify that the above and foregoing is a full, true and correct transcript of all of the proceedings and testimony, both oral and documentary, offered and introduced at the hearing on the application of the defendant for continuance and on the trial of the above entitled cause, and also of all exceptions taken and noted, together with the instructions given in the charge of the court to the jury, and all instructions requested and denied and all exceptions taken therein; and I now certify the foregoing to be such transcript; and

In testimony whereof I hereunto have signed my name at Kansas City, Kansas, this 10th day of April, 1915.

ELIZABETH LA BAR.

1219 And thereafter within due time the defendant filed his several motions for a new trial and in arrest of judgment, which motions appear as a part of the record of this cause; and thereupon the same having been duly argued and considered by the court, all of said motions were overruled and to the ruling of the trial court as to each of said motions in overruling the same, the defendant at the time duly excepted; and said rulings and the

defendant's exceptions thereto were at the same time made and entered of record upon the journal.

And now the defendant tenders this his bill of exceptions to the action of the court in the various particulars therein set forth as a true, correct and complete bill of exceptions.

JAMES H. HARKLESS,  
D. R. HITE,  
E. D. McKEEVER,  
*Attorneys for Defendant.*

And because the foregoing matters contained in this bill of exceptions are not a part of the record the defendant, George S. Badders, prays the court to certify, sign and allow the foregoing as his bill of exceptions in this cause. And the court having fully examined the foregoing bill of exceptions, finds the same to be true, full and complete; and it is accordingly ordered by the court that said bill of exceptions be and the same is hereby certified, signed and sealed by the judge, allowed and ordered to be filed and to be made, and the same is hereby filed and made a part of the record in this cause.

Done this 25th day of May, 1915.

DAVID P. DYER, *Judge.*

Approved May 21, 1915.

ROBERTSON.

Endorsed: In the District Court of the United States for the District of Kansas, First Division. The United States vs. George S. Badders. No. 4160. Criminal. Bill of Exceptions. Filed May 27, 1915. Morton Albaugh, Clerk.

1220 In the District Court of the United States for the District of Kansas, First Division.

No. 4160.

UNITED STATES  
v.  
GEORGE S. BADDERS.

*Bond.*

Know all men by these presents, that we, George S. Badders as principal, and A. H. Byers, as surety, are held and firmly bound unto the United States of America in the full and just sum of ten thousand dollars to be paid to the United States of America, to which payment well and truly to be made we bind ourselves, our heirs, executors and administrators jointly and severally by these presents.

Sealed with our seals and dated this third day of February in the year of our Lord, 1915.

Whereas, lately at the January Term A. D. 1915, of the District

Court of the United States for the District of Kansas, First Division, in a suit depending in said court between the United States of America, plaintiff, and George S. Badders, defendant, a judgment and sentence was rendered against the said George S. Badders, and the said George S. Badders has obtained a writ of error from the Supreme Court of the United States to reverse the judgment and sentence in the aforesaid suit, and a citation directed to the United States of America citing and admonishing the United States of America to be and appear in the Supreme Court of the United States at the City of Washington, District of Columbia, sixty days from and after the date of said citation, which citation has been duly served.

Now the condition of the above obligation is such that if the said George S. Badders shall appear, either in person or by attorney, in the Supreme Court of the United States on such day or days as may be appointed for the hearing of said cause in said court and prosecute his said writ of error, and shall abide by and obey all orders made by the Supreme Court of the United States in said cause, and shall surrender himself in execution of the judgment and sentence appealed from as said court may direct, if the judgment and sentence against him shall be affirmed; and if he shall appear for trial in the District Court of the United States for the District of Kansas, First Division, on such day or days as may be appointed for a retrial in said District Court and abide by and obey all orders made by said court provided the judgment and sentence against him shall be reversed by the Supreme Court of the United States; then the above obligation to be void, otherwise to remain in full force, virtue and effect.

GEORGE S. BADDERS.  
A. H. BYERS.

Approved: February 3, 1915.

DAVID P. DYER,  
*Judge of the United States District Court  
for the District of Kansas.*

Endorsed: #4160. Bond. Filed February 3, 1915. Morton Albaugh, Clerk.

1222 In the District Court of the United States for the District of Kansas, First Division.

THE UNITED STATES  
vs.  
GEORGE S. BADDERS.

*Præcipe for Transcript.*

You are hereby requested for and on behalf of George S. Badders, in the above entitled cause now pending in the Supreme Court of the United States, to cause to be made a complete transcript of the

record to be lodged and filed in the Supreme Court of the United States in the above entitled cause.

HARKLESS & HISTED.

Endorsed: The United States vs. George S. Badders, Præcipe for Transcript. Filed May 13, 1915. Morton Albaugh, Clerk.

1223 UNITED STATES OF AMERICA,  
*District of Kansas, ss:*

I, Morton Albaugh, Clerk of the District Court of the United States of America for the District of Kansas, do hereby certify the within and foregoing to be a true, full and correct copy of the record and proceedings in Case No. 4160, entitled The United States vs. George S. Badders in said court.

I further certify that the original citation and writ of error are attached hereto and returned herewith.

In testimony whereof, I have hereunto set my hand and affixed the seal of said court, at my office in Topeka, in said District of Kansas, this 10th day of June, 1915.

[Seal of District Court U. S., District of Kansas.]

MORTON ALBAUGH, *Clerk.*

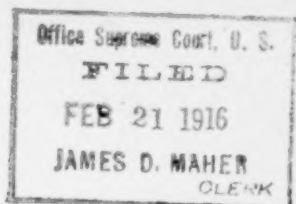
[United States internal revenue documentary stamp, series of 1914, ten cents, canceled 6/10/15. U. S. D. C.]

Endorsed on cover: File No. 24,804. Kansas D. C. U. S. Term No. 521. George S. Badders, plaintiff in error, vs. The United States. Filed June 19th, 1915. File No. 24,804.





✓  
No. 521.



IN THE

# Supreme Court of the United States

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OCTOBER TERM, 1915.

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GEO. S. BADDERS, PLAINTIFF IN ERROR,

VS.

UNITED STATES OF AMERICA, DEFENDANT IN ERROR.

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ERROR TO THE UNITED STATES DISTRICT COURT, DISTRICT OF KANSAS.  
HONORABLE D. P. DYER, PRESIDING JUDGE.

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**STATEMENT, SPECIFICATIONS OF ERROR, BRIEF AND  
ARGUMENT FOR PLAINTIFF IN ERROR.**

---

D. R. HITE,  
JAS. H. HARKLESS and  
CLIFFORD HISTED,  
*Attorneys for Plaintiff in Error.*



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**No. 521.**

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**IN THE**  
**Supreme Court of the United States**

---

GEO. S. BADDERS, PLAINTIFF IN ERROR,

VS.

UNITED STATES OF AMERICA, DEFENDANT IN ERROR.

---

**STATEMENT.**

The plaintiff in error was tried and convicted at the January, 1915, term of the United States District Court for the District of Kansas of violations of Section 215 of the Criminal Code. The indictment contains twelve counts, purporting to charge the defendant with having placed twelve letters in the Post Office at Topeka, Kansas, for the purpose of executing a scheme and artifice to defraud the persons to whom these letters were addressed, of property by means of false and fraudulent pretenses and promises. The depositing of each letter forms the basis of a separate count. The indictment sets out the alleged scheme or artifice in the first count, and by reference incorporates such scheme and artifice in each of the subsequent counts, for that reason we set out only the first count.

The trial court sustained demurrers to the Government's evidence as to counts 1, 7, 8, 10 and 12, and upon each of these counts the jury was instructed to and did return a verdict of "not guilty." The jury returned verdicts of "guilty" on each of the other seven counts; and the plaintiff in error then was sentenced by the court to serve five years in the Kansas Federal Penitentiary and pay \$1,000 in costs on each count, the term of imprisonment under each count to run concurrently (Record, 128). From



these sentences the plaintiff in error prosecutes error to this court under Section 238 of the Judicial Code, contending that his case involves the construction and application of the Constitution of the United States.

The first count of the indictment reads as follows, (Record p. 2):

*The United States of America, The District of Kansas, First Division, ss:*

Sec. 215, Penal Code, 1910.

*In the District Court of the United States in and for the District aforesaid, at the April Term Thereof, A. D. 1914.*

The Grand Jurors of the United States, within and for the First Division of the District of Kansas, at Topeka, duly impaneled, sworn and charged at the term aforesaid of the court aforesaid, on their oath present, that one George S. Badders, on or about the 28th day of November, A. D. 1913, in the said division of said district, then and there being, did then and there and theretofore unlawfully, knowingly, fraudulently, designedly and feloniously devise a scheme and artifice to defraud many and various persons, partnerships, firms, and corporations, residents of the United States, to-wit: Spero, Michael & Son, a corporation duly organized, incorporated and existing under the laws of the state of New York, in the city of New York; Cohen & Lang, a corporation duly organized, incorporated and doing business under the laws of the state of New York, in New York City; Lipps Bros., a partnership firm consisting of Philip Lipps, Charles Leon Lipps, and Bernard H. Lipps, doing business under the firm name and style of Lipps Bros., of New York City, New York; H. Kamber, of New York City, New York, doing business under the name of H. Kamber & Company; Morris Glickman, of Philadelphia, Pennsylvania, doing business under the name of M. Glickman & Company; Cohen, Goldman & Company, a copartnership consisting of Hyman Cohen and William Goldman, of New York City, New York, doing business under the name and style of Cohen, Goldman & Company; Rosenwald & Weil, a corporation of Chicago, Illinois, duly incorporated and existing under the laws of the state of Illinois; The Ornstein & Rice Neckwear Company, of St. Louis, Missouri, a partnership, consisting of William Ornstein, B. E. Rice, Albert K. Baum, Nat K. Baum, and Charles A. Werlheimer doing business under the name and style of The Ornstein & Rice Neckwear Company; Cluett, Peabody & Company, a corporation duly organized and incorporated

under the laws of the state of New York, and through its branch office, doing business in Kansas City, Missouri; The M. C. Lilley & Company, a corporation duly organized and incorporated under the laws of the state of Ohio, of Columbus, Ohio; The Hartman Trunk Company, a corporation, duly organized and incorporated under the laws of the state of Wisconsin, and maintaining an office and place of business in the city of Chicago, Illinois; The Ely Walker Dry Goods Company, a corporation duly organized and incorporated under the laws of the state of Missouri (a more complete and correct description of said persons, firms, partnerships and corporations is to these Grand Jurors unknown, and for that reason cannot be set out herein), and many and various other firms and persons to these Grand Jurors unknown, of goods, wares, merchandise, and property of value, by means of various and numerous promises, representations, and false and fraudulent pretenses and promises, which said scheme and artifice to defraud was and is as follows, to-wit:

That he, the aforesaid George S. Badders, who was then and there and at all times herein mentioned, interested in and a representative and officer of a certain corporation known as The Badders Clothing Company, of Topeka, Kansas, which is hereinafter referred to as The Badders Company, and said corporation, through and by said George S. Badders, used in its business the name of The Badders Company, which said company was then and there and at the times herein mentioned conducting a mercantile business, and that on or about the date herein mentioned, and theretofore, George S. Badders, planned, contrived and devised that he would and did represent, and pretend that said The Badders Company, of which he was the president, was a going concern, with large assets, and solvent, and able to pay for all goods ordered by him for it, and so received by it, and that said company was financially able and would be financially able to protect all of its creditors, and that it would do so; that the capital stock of said corporation, which had theretofore been in the amount of Thirty Five Thousand (\$35,000.00) Dollars, had been increased in the sum of Twenty Five Thousand (\$25,000.00) Dollars, making it then Sixty Thousand (\$60,000.00) Dollars; that said increase in capital stock had been fully subscribed and would be paid in full so as to be available for the payment of creditors on and immediately after December 20th, 1913; that the said The Badders Company would be able to meet its debts and liabilities and pay them in full, that he had planned a sensational sale whereby he would sell, in the general course of business in said store, a large amount of goods, such as was furnished by the parties hereinbefore mentioned, for cash

and by that means furnish a satisfactory explanation to said parties for the numerous large orders for goods which he would be making, and thereby cause and procure the merchants, firms and corporations hereinbefore mentioned and described to sell and deliver to the Badders Company, upon its credit, to be paid for in the future, large amounts of merchandise, consisting of clothing, men's furnishing goods, and various kinds of merchandise of the amount and value of many thousands of dollars, the exact amount of which is to these Grand Jurors unknown, and after having so obtained said goods, he, the said George S. Badders, would then sell and dispose of the same in part as a sensational sale, at a sacrifice, and for less than the retail price, if necessary, in order to dispose of said merchandise rapidly for cash; that he would sell some of said goods to various other merchants and business firms for less than the cost price, or the price agreed to be paid by him to the parties from whom he received the same.

And to evade paying therefor, he would and did have pretended meetings of the Board of Directors of the said The Badders Company, in which he had them vote and they did vote for and declare a dividend of twenty five per cent (25%) at one time and twenty five per cent (25%) at another; also have himself voted an increase in salary of Five Thousand (\$5,000.00) Dollars per annum, in addition to his then salary of Sixty (\$60.00) Dollars per week, and twenty five per cent (25%) commission of the Ten Thousand (\$10,000.00) Dollars increase of capital for selling said stock to himself, and that he would be paid fifteen per cent (15%) on all sales over \$50,000.00 per annum, and five per cent (5%) thereon to the secretary, and do this regardless as to whether there were any profits in the business of the said company or not; he would ship some of the goods so received to other points and store them, and also take large amounts of valuable goods out of said store and have them removed from said place of business and dispose of them in various quantities to other merchants, and not sell them in the ordinary course of business, in the place of business occupied by The Badders Company, as he would have and cause those from whom he received the goods to believe he would; that as a part of his said scheme he would write letters to his many creditors whom he owed prior to the receiving and obtaining of goods as aforesaid, telling them of the sensational sale he was making, and make statements to them of the additional subscription to the capital stock of The Badders Company which he would and did in substance represent to them would be paid and available on and after December 20th, 1913, so that the creditors whom he already owed

would extend to him credit and delay the enforcing of the collection of a large amount of debts already due from said The Badders Company, by which said delay he would have the time and opportunity to dispose of large quantities of merchandise for cash, and appropriate the proceeds thereof to his own personal use, to the fraud and injury of The Badders Company, and the many and various persons, firms, and corporations, among whom are those hereinbefore named, from whom he would obtain the merchandise aforesaid; that it was a part of his said scheme that he would so order the merchandise aforesaid, as aforesaid, and dispose of it for cash, in the manner herein described, without paying for the same; that he, the said George S. Badders, then and there and at all the times herein mentioned, and at the various times he ordered the goods, and merchandise, from the various parties aforesaid, then and there unlawfully and feloniously designed and intended not to pay for the same, but to so order, obtain and convert said merchandise into money and appropriate said money to his own use for personal gain, and thereby cheat and defraud the parties hereinbefore mentioned, all as aforesaid.

And the Grand Jurors aforesaid, upon their oath aforesaid, do further present that it was not true that the said The Badders Company had large assets; that it was not true that said company was solvent and a going concern; that it was already owing large sums of money which it could not pay, and which the said George S. Badders did not intend that it should pay, and he had control of the business operations of the said The Badders Company; that he then and there knew that the Twenty Five Thousand (\$25,000.00) Dollars subscription was a pretended increase of capital stock in The Badders Clothing Company which would not be paid or ever become available for the payment of goods ordered by him for said company, and did not intend that it should be so paid on December 20th, 1913, or at any other time, and he, the said George S. Badders, then and there well knew that the pretenses, promises and statements so made by him as aforesaid, and so used by him, were false and untrue, all of which he, the said George S. Badders unlawfully and feloniously did with intent then and there to cheat and defraud any and all persons whomsoever might be so induced as aforesaid to send to him the said The Badders Clothing Company goods and merchandise so ordered by him under his said scheme and artifice to defraud.

And the Grand Jurors aforesaid, upon their oath aforesaid, do further find and present that within the jurisdiction aforesaid of the court aforesaid, for the purpose of promoting and carrying on and executing said scheme and artifice

to defraud, and in attempting so to do, the aforesaid George S. Badders did then and there, and on or about the 28th day of November, A. D. 1913, with the intent as aforesaid unlawfully and wilfully and feloniously, place and cause to be placed in the post office establishment of the United States, at Topeka, Kansas, in said division and district, the same being a part of the post office establishment of the United States, and an authorized depository for mail, a certain letter, to be sent and delivered by the post office establishment of the United States, directed to Spero, Michael & Son, 836 Broadway, New York, a true copy of said letter being as follows, to-wit:

"George S. Badders, President.  
Seward R. Graham, Sec. Treas.

Stein-Bloch Smart Clothes.  
The Badders Company,  
Seventh and Kansas Avenue, Topeka, Kansas.

November 28,  
Nineteen Hundred Thirteen.

Spero, Michael & Son, 836 Broadway, New York City.

Gentlemen: Your favor of the 25th is at hand. We wish you would consider this matter further and ship the goods as we need them. We unfortunately looked at goods as too many places and when we narrowed our purchasers to what we wanted all parties we had seen reported sales and this of course looked like we were buying a lot of goods. As a matter of fact we cancelled about \$12,000.00 in clothing from our fall purchase and now find ourselves short. We bought from the following houses only in New York City (all others cancelled):

Cohen & Lang .....	862.50
Lipps Bros. ....	1941.75
J. Cohen Sons Co. ....	1873.50
Robert Kamber .....	1200.00
Nipson System .....	1200.00

All goods have been shipped with the possible exception of Nipson System, whose invoice we have not received. We can use your merchandise and for that reason did not cancel.

Will you not talk with Robert Kamber & Hoffman, J. Samuels & Bros. and call Stein-Bloch at Rochester on long distance if in any doubt as to our responsibility.

Your very truly,

The Badders Company,  
By Geo. S. Badders."

Said letter then and there being enclosed in an envelope, sealed and stamped with a sufficient number of United States postage stamps to entitle it to be transmitted through said mail and addressed to Spero, Michael & Son, 836 Broadway, New York; and this he, the said George S. Badders, did, contrary to the form of the statute in such case made and provided, and against the peace and dignity of the United States of America.

A general demurrer (Record 28), a special demurrer (Record 36), a motion to quash (Record 37-40), a motion for the government to elect (Record 43), and a petition for a bill of particulars (Record 44-48) were filed against the indictment. These demurrers, motions and petition were overruled and these rulings are assigned as error. The motion to quash challenges the legality of the proceedings of the grand jury, which returned the indictment. The challenge is founded upon the fact that after the convening of the District Court for the First Division of Kansas, on April 13, 1914, the District Judge, on April 15th, 1914, left the district, and until about April 20th, 1914, was engaged with other judges in holding a term of the United States Court for the District of Iowa. This fact is shown in the first bill of exceptions (Record 52, 53). That during this period there was no United States District Judge within the district, and notwithstanding the absence of the judge, the grand jury took the testimony of witnesses and deliberated upon the indictment afterwards returned against the plaintiff in error (Record 55).

In ruling upon this motion, after the evidence was offered to show the absence of the judge, the taking of testimony and the deliberations upon the indictment, the court announced that he understood from the evidence that there were witnesses examined as to this indictment on each day during the period when the judge of the district was absent, holding court in Iowa, but overruled the objection (Record 55).

Another ground of the motion to quash is that the indictment was not presented to the court by the grand jury (Record 55). Upon this point the evidence showed that the grand jury came into court, and the district judge who then had returned and was holding court, asked if the foreman had any report to make; that thereupon the present indictment, with others, was handed to the judge by the foreman. That the grand jury was not polled, nor was any further inquiry made of them as to whether this indictment had been found by them (Record p. 58).

Another ground of the motion to quash is that each of the counts of the indictment is duplicitous because the court cannot determine whether the several counts attempt to charge the defendant with the offense of having devised a scheme or artifice to defraud or a scheme or artifice for obtaining property by means of false and fraudulent pretenses and promises (Record 38 and 39).

Another ground of the motion to quash is that all of the counts after the first, charges the same offense set out in the first count (Rec. 39).

Another ground of the motion to quash is that each of the counts of the indictment are so ambiguous that the defendant could not prepare his defense nor ascertain with reasonable certainty the charges he was to meet (Record 39).

Another ground of this motion is that it purports to be drawn under section 215 of the Act of March 3, 1909, which section does not authorize the joinder of more than one offense in an indictment, and, that the present indictment attempts to divide and split up the alleged defense by stating it in separate counts. The trial court overruled all of the grounds of this motion (Record p. 50).

The general demurrer (Record 28 *et seq.*) to each of the counts is that they do not state the alleged transgression so distinctly, clearly and particularly as to advise the defendant of the charge he has to meet and enable him to avail himself of a conviction or acquittal and defense of another prosecution for the same offense. Also that none of the counts set forth the facts which the Government claims constitute the offense with such clearness that upon examination the court is able to determine whether the facts thus stated are sufficient to support a conviction; and finally, because the indictment does not state facts sufficient to constitute an offense against the laws of the United States. These demurrers were overruled (Record 50).

The special demurrer (Record 36) is that in each count of the indictment it is alleged that defendant "placed and caused to be placed in the Post Office establishment of the United States at Topeka, Kansas," a certain letter, but fails to set out the name of the person by or through whom it is claimed the defendant "caused to be placed in the Post Office" the letters referred to. This special demurrer was overruled (Record 50).

The petition for a bill of particulars (Record 44-48) asks that the Government be required to state when, and to what officer or agent of the corporations and partnerships named in the indict-



ment it is claimed that the defendant made or intended to make representations, pretenses and promises setting out what representation, pretense or promise, if any was made or intended to be made, to such person and whether the same or any of them were in writing, and if in writing to furnish the defendant a copy or copies of such writing.

It further asks that the Government be required to state when and from whom it claims that the defendant obtained merchandise as described in the indictment; also to state the names and addresses of "the various other merchants and business firms" to whom it is alleged that the defendant "would sell some of said goods for less than the cost price" and also the times when the plaintiff claims such sales were made, with the names and addresses of "the parties" from whom it is claimed the defendant received the goods which in the indictment it is alleged the defendant would sell to such various other merchants and business firms for less than cost, and also the time or times when it is claimed that the defendant received such goods.

The petition asks also that the Government set out the times when the alleged meetings of the Board of Directors of the Badders Clothing Company were held, at which the dividends and increase of salary, and payment of commissions were determined upon. It also asks that the Government state when and from whom it is claimed the defendant received merchandise which it is alleged that he would ship to other points, and store, and also the names of the places to which it is claimed the goods were to be shipped, and when and how long said goods were to be stored. The petition asks also that the Government be required to give the names of the other merchants referred to in the indictment in the following language:

"And also take large amounts of valuable goods out of said store and have them removed from said place of business and dispose of them in various quantities to other merchants and not sell them in the ordinary place of business occupied by the Badders Company as he would have, and cause those from whom he received the goods to believe he would."

Also to state the names of the persons whom he caused to believe that he would sell the goods in the ordinary course of business, and also the time when, and the persons from whom the defendant received these goods.



The petition asks also that the Government furnish the defendant copies of the letters referred to in the indictment in the following manner:

"That defendant would write letters to his many creditors whom he owed, prior to the receiving and obtaining goods as aforesaid, and also the names of the persons from whom and the time when the plaintiff claims the defendant received and obtained the goods referred to."

The petition asks also that the Government state the particulars upon which it relies to establish the allegations that the defendant mailed the letters set out in the indictment "for the purpose of promoting and carrying on and executing said scheme and artifice to defraud."

Each ground of this petition, or bill of particulars, was overruled (Record, 51).

The regular district judge for Kansas being disqualified another judge was assigned to hear the case. It was set for trial on January 19th, 1915. When the assignment for trial was made the defendant filed a motion for the postponement of the trial (Record, 68) in which he alleged that proceedings in bankruptcy had been begun against the Badders Clothing Company resulting in adjudication that it was bankrupt; that an appeal from such judgment was pending in the United States Circuit Court of Appeals for the Eighth Circuit where it was to be submitted on briefs and argument on January 18, 1915. That counsel were engaged in the preparation of the briefs and argument on appeal; that the determination of the Circuit Court of Appeals as to many of the matters involved in the bankruptcy proceeding should be had before the criminal case was tried; that in the bankruptcy proceeding a receiver had been appointed who had possession of the large quantity of books, papers, documents and correspondence relative to the business of the Badders Clothing Company which were of such importance to the defendant in the criminal case that he could not safely proceed to trial without them; that he had been refused access to such papers by the receiver; that the Badders Clothing Company was contesting the receiver's appointment and consistently could not aid in securing a release of the papers. It was denied by the trial court and the defendant directed to get ready for trial (Record, 170).

Upon the application of the defendant on January 20, 1915, an order was made by the trial judge upon the receiver appointed in the bankruptcy proceeding against the Badders Clothing Company to produce at the Federal Court where the criminal case was to be tried, the boxes of books, papers, documents and correspondence referred to in the above motion, and that the defendant and his counsel should have access to them (Record, 178).

After the jury was empaneled on January 23, the receiver reported that the papers which he had been directed to produce had disappeared and he believed had been stolen (Record 178). Thereupon the defendant again asked for a postponement of the trial, filing his application in writing (Record, 90) setting out that the receiver had been specially notified to preserve the papers which had disappeared, stating the nature of the contents of the papers, showing the importance of them in the preparation and presentation of his defense; that his necessary attendance upon the court during the trial would prevent his making personal search for the missing papers, which he believed could be found if diligent search were made, but that if they could not be found by taking the testimony of wholesale houses in the east, with which the Badders Clothing Company had done business for several years, many duplicate originals of the papers could be found, and secondary evidence, at first hand, produced as to the remainder.

In this application he further alleged that many of the papers placed in the hands of the receiver, consisted of correspondence between the Clothing Company and its creditors on another occasion when a sale precisely similar to the one referred to in the indictment had been held by the Clothing Company; that the papers which the receiver failed to produce had been selected by the defendant in the presence of the receiver and the receiver requested to safely preserve them, as they would be needed by the defendant in the trial of the criminal proceedings against them; that without these papers, and reference to the books, documents, files and correspondence in the cases which had been in the possession of the receiver, defendant could not properly advise his counsel as to the cross examination of the Government's witnesses, many of whom were former creditors with whom such correspondence and dealings had been had. That without the papers or evidence of their contents obtained from such creditors the defendant would lose the corroborative force and effect of admissions made by such

creditors in regard to transactions of the Badders Clothing Company, and, that without the reasonable time for procuring secondary evidence of such papers the defendant might be compelled to go upon the witness stand in his own behalf and thereby impair his constitutional right to be compelled to be a witness against himself; and, that he was being deprived of the process of the court to compel the production of testimony. The trial court overruled the application and directed the trial to proceed.

A number of the jurors who finally took part in the trial were examined prior to the time defendant was arraigned or called upon to plead. The Government called attention to the fact that no issue had been joined, whereupon the court stated (Record, 172).

"I will do that before I swear the jury," and asked the defendant what plea he desired to enter. By his counsel the defendant answered that he had demurred to the indictment and would not plead further, whereupon the court directed a plea of "not guilty" to be entered. The defendant excepted on the ground that he had not been arraigned, whereupon the indictment was read to him and he was again asked to plead, but again refused to do so. At this point the defendant made the following objection (Record, 172 and 88).

"The defendant objects to any further proceedings in this matter on the ground that before the proceeding by the court for the empaneling of the jury he was not arraigned and no plea was entered."

This objection was overruled by the court and an exception taken (Record, 172).

Many errors in the admission of testimony are assigned. It is believed that a clearer understanding of the contention of the defendant below as to these errors will be gained by commenting in the argument on the evidence objected to. At the close of the Government's case the defendant interposed demurrers to the evidence (Record, p. 102) on the ground that the evidence did not establish facts sufficient to constitute an offense against the United States. As stated before, these demurrers were sustained as to five of the counts and overruled as to the remainder. Defendant then testified in his own behalf and introduced other evidence. At the close of all of the testimony the trial court refused defendant's request to direct the jury to return a verdict of not

guilty on each count of the indictment (Record, 128). This ruling is assigned as error, defendant claiming that the evidence as a whole failed to show the devising of a scheme or artifice for obtaining property by means of false and fraudulent pretenses and promises; failed to show any intent to use the post office establishment as a means or for the purpose of carrying out any such scheme and artifice; failed to show that the defendant either placed or caused to be placed in the post office at Topeka, Kansas, any or either of the letters set out in the indictment; and failed to show that the defendant wrote or mailed any of the letters; and failed to establish facts sufficient to show that defendant had committed any offense against the United States.

### **Instructions Requested.**

The defendant requested and the court declined to give each of the following instructions:

1.

"The court charges and instructs the jury that the defendant in this case is not on trial for the failure, neglect or refusal to pay any of his debts, nor for having given checks of any kind or character upon banks, or to creditors that have not been paid; nor for any breach of promise or inability to pay debts at any time, nor upon any charge of failing to pay up any capital stock that he may have subscribed to the Badders Clothing Company; nor upon any charge of selling any of his property or goods at any price, or for any purpose, and that as far as this case is concerned these questions are wholly immaterial except insofar and only as such matters may bear or have a bearing upon the charge in the indictment that the defendant had devised a scheme and artifice to defraud his creditors at the time charged in the indictment; and that the inquiry into these matters become necessary only as bearing solely and only upon such intent and are not to be considered or weighed by the jury for any other purpose," as requested by the defendant (Record 735).

2.

"The court instructs and charges the jury that if said note was given by George S. Badders to the Badders Clothing Company in payment of an increase in the capital stock of said corporation, to the extent of twenty-five thousand dollars, and you believe from the evidence that said note was given in

good faith by the defendant, Badders, for that purpose, and that said Badders at the time he executed the said note was solvent, and said note a marketable asset, then you are instructed that said increased capital stock was paid up and constituted a capital asset of said corporation and was a sufficient payment to its capital stock so increased" (Record 736).

## 3.

"The court charges and instructs the jury that if they find from the evidence that the money taken by the defendant, Badders, from the sale and disposition of his stock of goods was by the said Badders paid out or caused to be paid out to his creditors, or in payment of other *bona fide* indebtedness and expenditures in good faith, and with the intent on the part of said Badders to apply the same in good faith to the liquidation of his debts and *bona fide* expenses incurred, then you are instructed that no presumption can arise therefrom or because of such acts and conduct of the defendant, that he intended to or had devised a scheme or artifice to defraud, as charged in the indictment, and if he did so pay out the same in good faith then you may take such facts into consideration also in passing upon the question as to whether he intended at the times charged in the indictment to devise a scheme or artifice to defraud his creditors as therein charged" (Record 736).

## 4.

"The court instructs and charges the jury that even though they may find the defendant may have taken a number of boxes of goods from the store in the month of December and shipped the same out of the City of Topeka and stored the same elsewhere, and that all of said goods were returned afterwards to the store and replaced therein and constituted a part of the stock turned over to the receiver, then you are instructed that so far as the creditors are concerned the defendant had the right to do so and that the same constituted no offense in itself and that the defendant cannot be found guilty of any crime or offense in said transaction of itself and that such evidence was competent in the case only and solely as bearing upon the question as to whether the defendant intended to and devised a scheme or artifice to defraud his creditors as and at the time charged in the indictment; and in passing upon this question the jury may take into consideration the evidence tending to show that the defendant did so return the goods, and that he charged the value thereof to his own personal account upon the books of the corporation at the time they were taken out" (Record 736).

5.

"The court charges and instructs the jury that it was no crime or offense so far as this case is concerned, as to whether the corporation itself or the corporation at the instance of the defendant declared the dividends shown in the evidence or that the defendant was instrumental in causing the dividends to be declared; nor as to how or in what manner it was declared, but that such facts become material only and solely in passing upon the question as to whether the defendant had devised a scheme and artifice to defraud his creditors, at the time as charged in the indictment" (Record 737).

6.

"The court charges and instructs the jury that there is no evidence in this case from which the jury are justified in finding that any dividend was ever paid to or received by the defendant Badders, or that any commissions upon the sale of capital stock or upon the sale of merchandise in excess of fifty thousand dollars, was ever paid to or received by the defendant" (Record 737).

7.

"The court instructs the jury that any and all evidence in the case showing or tending to show that a dividend was declared upon the capital stock of the corporation or commissions were agreed to be paid for the sale of goods, or capital stock, or that increased salaries were agreed to be paid by the corporation to its officers, and to the defendant, was not admitted in evidence for the purpose of showing, nor is the same to be considered by the jury as any crime or violation of law in this case, but was admitted solely and only that the same might be considered by the jury as bearing upon the question as to whether the defendant had devised a scheme or artifice to defraud his creditors as and at the time charged in the indictment, and they cannot be considered by the jury for any other purpose" (Record 737).

8.

"The court instructs and charges the jury that the evidence tending to show that the defendant purchased some municipal bonds and afterwards disposed of the bonds and received cash, either partly in notes or partly in gold from the trust company, constituted no crime or offense against the law on the part of the defendant, and so far as the creditors are concerned or affected by this case, he had a right to do so and that such evidence was admitted solely and only for the consideration of the jury in passing upon the question as to whether the defendant devised a scheme or artifice to defraud" (Record 738).

9.

"The court instructs and charges the jury that it is a matter of no importance in this case as to whether the defendant paid some of his creditors and left others unpaid, or as to whether he preferred some creditors as against others and, that if such creditors as he did pay were paid in good faith and for the purpose of discharging their indebtedness, and any and all evidence with reference to the payment of any one or more creditors, or the refusal to pay any one or more of the creditors, and all evidence as to the acts and conduct of the defendant in reference to the same were admitted in evidence solely and only for the consideration of the jury as bearing upon the question as to whether the defendant intended to or devised a scheme or artifice to defraud his creditors as and at the time charged in the indictment" (Record 738).

10.

"The court instructs and charges the jury that in passing upon the question in this case as to whether the defendant devised a scheme or artifice for the purpose of defrauding his creditors as charged in the indictment the jury are instructed that if from all of the evidence in the case it shall appear to them that the acts and conduct of the defendant were as consistent with honesty and good faith as with the purpose and intention to defraud as charged in the indictment, then the jury are instructed that the defendant is not guilty and they should return a verdict in his favor" (Record 738).

11.

"The court instructs the jury with reference to whether the defendant mailed the letters set out in the indictment, that if they find from the evidence that the same were mailed in pressing circumstances and financial embarrassment confronting him at the time, for the purpose and with the intent to secure extension of time, or additional goods in good faith for his sacrifice sale, with the expectation and intent that he could and would be able to meet his liabilities incurred, and were not mailed with an intent on his part in furtherance of any scheme or artifice to defraud his creditors, or to aid in doing so, then you are instructed that the defendant is not guilty in this case (Record 739).

12.

"The court charges and instructs the jury that no charge of a scheme or artifice to defraud a creditor can be sustained against the defendant as to any creditor who may have shipped and billed his goods to the corporation prior to the time of the mailing of the letters mentioned in the indictment to such creditor" (Record 739).



13.

"The court instructs the jury that if they have a reasonable doubt as to the guilt of the defendant then they must return a verdict for the defendant, and in this connection the jury are instructed that each individual juror must be convinced beyond a reasonable doubt of the guilt of the defendant, before they should return a verdict of guilty" (Record 739).

14.

"The court instructs and charges the jury that on January 22, 1914, the defendant was served with an injunction prohibiting him from disposing of any of the money or property of the Badders Clothing Company and from the date of the service of that injunction down to this date the defendant was prohibited from paying any such debts and no inference against the defendant can be drawn from the fact that none of the debts of said clothing company were paid or attempted to be paid after that time; or, that he refused to pay any creditors of the clothing company, who demanded payment of their claims after that date" (Record 739).

15.

"The court instructs the jury that if you find from the evidence that in the months of December, 1913, and January, 1914, the Badders Clothing Company was in fact insolvent, and was being pressed by its creditors for payment of their claims, then you are instructed that it could not make payment through its president or officers of any one or more of said claims, or allow an attachment to stand without being released for a period of five days except at the risk of being adjudged a bankrupt" (Record 740).

16.

"The court instructs the jury that if you find from the evidence that the immediate cause of the failure of the defendant to pay or cause to be paid, the debts of the Badders Clothing Company, arising from the purchase of the goods referred to in the indictment, was the conditions confronting him at that time, and the demands for payment for such goods that were made upon him, and that except for such conditions he would have paid for such goods, then your verdict must be for the defendant" (Record 740).

17.

"The court instructs the jury that the indictment in this action charges defendant with having devised a scheme or artifice to defraud the several persons, partnerships and corporations named in the indictment, and other persons to the grand jurors unknown, of goods, wares, merchandise, and



property of value by means of false and fraudulent pretenses and promises, and you are therefore instructed that evidence tending to show that the defendant converted money of the Badders Clothing Company to his own use, does not sustain this charge" (Record 740).

18.

"The court instructs the jury that the stock of goods in question was the property of the Badders Clothing Company and not of the creditors and the Badders Clothing Company had a right to sell the same or any portion of the same for any price they saw fit, or to otherwise dispose of the same as they saw fit; and the creditors have no right to interfere therewith, so far as this case is concerned, and any and all evidence introduced with reference to that subject, was admitted solely and only for the purpose of bearing upon the question as to whether the defendant devised a scheme or plan to defraud his creditors, and at the time stated in the indictment" (Record 740).

19.

"The court instructs the jury that as to any sales of merchandise made to Voiland, Mills, or to August, that the defendant had the right to sell said goods to said parties when he did sell them, and to sell them for such price as he saw fit, and that the evidence concerning those matters was admitted only for the purpose and as bearing upon the question as to whether the defendant devised a scheme or artifice to defraud his creditors, as and at the time stated in the indictment and in this connection you are further instructed that if said goods were sold at a reasonable price under the conditions existing at the time, having regard to the character of the goods, then you are instructed that no presumption of improper intent can arise therefrom as against the defendant" (Record 741).

20.

"The court instructs the jury that if you find from the evidence that the Badders Clothing Company after the completion of the sale was in good faith intending to continue in business, and had made arrangements for new wares, cutting down the space in their old place of business, and ordering fixtures and arranging for the continuance of business, then you are instructed that you must take such facts into consideration in passing upon the question as to whether or not defendant had any intent to defraud his creditors as and at the time charged in the indictment" (Record 741).

21.

"The court instructs the jury that any transaction or conduct by the defendant, Badders, as between himself and the Badders Clothing Company, or the handling of its cash funds, or goods in the manner shown by the evidence, is a matter of no importance to the Badders Clothing Company, and the question as between the clothing company and Badders is not at issue in this case, and he cannot be convicted for any transactions had between himself and the company, or for any alleged breach of duty between himself and the Badders Clothing Company, and any and all transactions between himself and the Badders Clothing Company were admitted in evidence only and solely as bearing upon the question as to whether the defendant intended to defraud the creditors at the time as charged in the indictment, and is to be considered by them solely and only as bearing upon that question" (Record 741).

22.

"The court instructs the jury that it appears in evidence that in 1911 a previous bankruptcy sale was conducted by the Badders Clothing Company in the same building at Topeka, Kansas. You are instructed, therefore, that if you find that as to said sale that Badders had informed his creditors thereof, and that the same was freely advertised as a sacrifice sale in the newspapers and resulted in a sale of goods so that the Badders Clothing Company was enabled as a result thereof, to pay up all of its debts and continue in business thereafter, and that said sale was begun in a similar manner to the sacrifice sale in question made in December, 1913, and that the sale in December, 1913, was to be had and conducted in similar circumstances and conditions as to that of 1911, then you may take such facts into consideration in passing upon the question as to whether the defendant had devised any scheme or artifice as and at the time charged in the indictment to defraud his creditors, as charged in the indictment" (Record 742).

23.

"The court charges and instructs the jury that even though they may find that the defendant did all the things and performed all of the acts charged in the indictment against him, in the manner and form as charged therein, still they are instructed that said acts and transactions of themselves do not prove that the defendant had the intention to form a scheme or artifice to defraud his creditors as charged in the indictment, and notwithstanding you find all of said facts to be true, still defendant cannot be convicted unless you find that he had an intention as charged in the indictment to defraud his creditors, and that the doing or performing of all or any

of the acts charged in the indictment constituted no crime on the part of the defendant unless the jury either believe that it was the original intention of defendant at the time and in the manner charged in the indictment, to defraud his creditors and persons as therein charged" (Record 742).

## 24.

"The court charges and instructs the jury that in considering the question as to what became of the funds taken in by the company at the sale, they may take into consideration the amount shown from the evidence to have been necessarily expended by the defendant in defending the corporation in the bankruptcy proceeding, as well also as the expenses incident to the sale, and any and all amounts that the corporation may have paid out to creditors or paid in liquidation and the satisfaction of debts for which the corporation might be liable" (Record 742).

The court's charge to the jury as to the scheme or artifice set up on the indictment was as follows (Record 746) :

"The nature of the scheme or artifice to defraud set out in each count of the indictment is in substance, that the defendant George S. Badders would falsely and fraudulently represent and pretend to the persons, corporations and partnerships named in the indictment, and to others, that the Badders Clothing Company, of which he was president, was a going concern, with large assets, and solvent, and able to pay for all goods that might be ordered and purchased by it or ordered and purchased by the defendant as the president of the Badders Clothing Company. That he, the said defendant, would order and purchase in the name of the Badders Clothing Company, large quantities of merchandise and dispose of the same for cash without paying for the same; that he designed and intended not to pay for the merchandise so ordered and purchased by him as aforesaid, but to obtain said merchandise, sell the same for cash and fraudulently convert said cash to his own use for personal gain, and in that way and by the means above stated, cheat and defraud the persons, co-partnerships and corporations named in the indictment of the merchandise ordered and purchased of them by the defendant in the name of the Badders Clothing Company.

This in brief, gentlemen, is the substance of the scheme alleged to have been advised by the defendant."

The defendant claims that the above does not constitute either a scheme or artifice within the meaning of section 215, and that upon such interpretation of the charge in the indictment the defendant's motions for directed verdicts should have been sustained.

The court's charge as to the defendant's intent was as follows (Record 747) :

"In determining what the intent of the defendant was you must take all of the facts and circumstances in this case, including the fact, if it be a fact, of the good character of the defendant in the case, consider them in the light of each other, with a view of getting at the actual truth of what the intent of the defendant was. You do not ordinarily get at what the intention of the person is by declaration of his own. The intent is generally established by facts and circumstances. From these facts and circumstances, and of all the evidence in the case, you will determine what the intent was on the part of this defendant. The object and purpose of the statutes under which this indictment was drawn was to protect the public against intentional efforts to despoil and to prevent the Post Office Establishment of the United States from being used to carry fraudulent schemes into effect. It makes but little difference what the specific representations were if they were false and fraudulent and made with the intention of carrying out a scheme, the object and purpose of which was to defraud."

Defendant claims that so charging does not satisfy his requests for instructions above set out, and does not cure the error in refusing such request.

The court's charge as to reasonable doubt was as follows (Record 748) :

"As I have said, the presumption of innocence follows the defendant throughout the trial, and until it is expelled or overturned by the testimony in the case and his guilt established beyond a reasonable doubt. A reasonable doubt is one which naturally arises out of the evidence in the case. You are not required to be absolutely certain of the guilt of the defendant. You try the case upon the probabilities of guilt, but the probabilities of guilt must be so strong as to leave no reasonable doubt of the guilt of the accused. Or, to put it in still another form, it must establish guilt to a moral certainty. In other words, you must be morally certain of guilt before you can convict, certain to the extent that you would feel justified, under your oaths, in acting if it related to most important business transactions of your own. If you are certain to that extent, you have no reasonable doubt and you should convict."

And defendant says this is not sufficient in view of his request on this point.

**Defendant's case involves the construction and application of Constitution.**

The defendant's claim that his case involves the construction and application of the Constitution of the United States is based, (a) upon the ruling of the trial court holding that the grand jury had a right to sit, or hold sessions, hear witnesses and deliberate upon this indictment during the absence of the district judge holding court in another state; (b) upon the trial judge's ruling that the indictment was lawfully returned into court by the grand jury. These two rulings the defendant contends involve the construction and application of the fifth amendment to the Federal Constitution providing that:

"No person shall be held to answer for a capital, or otherwise infamous crime, unless on the presentment or indictment of a grand jury \* \* \*."

The defendant contends also (c), that the ruling of the trial court on his demurrer to the indictment, holding that the indictment states facts sufficient to constitute an offense against the United States, involves the construction and application of the fifth and sixth amendments. The defendant contends, (d) that the ruling of the trial court denying his application for a postponement of the trial of the case to afford him an opportunity to produce evidence necessary for his defense, after making an order upon the receiver to produce such evidence, involves the construction and application of the sixth amendment to the Constitution of the United States which provides that the "accused shall have \* \* \* compulsory process for obtaining witnesses in his favor," and that part of Article 5 of the amendments providing that "no person shall be compelled in any criminal case to be a witness against himself, nor be deprived of liberty, without due process of law."

The defendant contends (e) also that the ruling of the trial court denying his motion in arrest of judgment, and refusal to direct verdicts in his favor (Record 118), involves the construction and application of the Constitution of the United States for the reason that such motion attacks the constitutionality of section 215 on the ground that it is not within the powers granted to Congress, also (f) that on the record the defendant was placed twice in jeopardy contrary to the provisions of the fifth amendment to the Constitution of the United States, also (g) claims the benefit of Article 8 of the Constitution, providing against the infliction of cruel and unusual punishments. The motion in arrest of judgment as well as the demurrers raise these questions as to each count of the indictment.

## **SPECIFICATIONS OF ERROR.**

In making these specifications the references are to the pages in the printed record where the original assignments and the rulings complained of can be found.

In view of the Government's contention that the case does not really involve the construction or application of the Constitution, we have deemed it proper to depart from the order in which the assignments of error appear in the record, and first specify the errors which we contend involve the construction and application of the Constitution.

### **Errors involving the construction and application of the Constitution.**

#### **I.**

Said court erred in overruling defendant's motion to quash said indictment when it appeared that the pretended Grand Jury assembled as stated in said motion, heard evidence, deliberated and pretended to vote on said indictment during the time when no judge of said court was present in the District of Kansas, all as alleged in paragraph II of defendant's motion to quash said indictment filed herein on October 11th, 1914.

(The above is assignment of error No. 4, Record 131. Ruling of court on the motion to quash, p. 50.)

#### **No. 2.**

Said court erred in overruling defendant's motion to quash said indictment when it appeared that the pretended grand jurors had not been sworn as required by law. (This is assignment of error No. 5. Record 131.)

#### **No. 3.**

Said court erred in overruling defendant's motion to quash the indictment herein when it appeared that said indictment had not been returned into open court by the grand jury as required by law. (This is assignment of error No. 6, Record 131.)

#### **No. 4.**

Said court erred in sustaining the indictment herein as against defendant's demurrers and motions to quash, for that said in-

dictment attempts to charge defendant with offenses under section 215 of the criminal code, consisting of the use of the United States mails as a means of defrauding persons of property when it appears from said indictment that the said means consisted of letters, harmless in themselves, and the offense, if any, was in defrauding such persons; and the Congress of the United States is without constitutional power to punish citizens for defrauding other citizens of their property, and the Congress has no power to make criminal the mere means by which such fraud, if any, may be accomplished or attempted; and said section insofar as it deals with the defrauding or attempting or designing to defraud persons of their property, or money, and attempts to punish the same, is wholly unconstitutional and void, and said court should have held and determined that it had no jurisdiction to proceed against this defendant under or by virtue of said section. (This is assignment of error No. 12, Record 132, Ruling Record 50.)

No. 5.

That said court erred in holding and deciding that it is an offense, cognizable by the courts of the United States, for the defendant to use the post office establishment of the United States fraudulently to deprive the persons named in the indictment of property, in the manner alleged in said indictment; for that, such use of the mails cannot be made an offense by act of Congress pursuant to any power conferred by the Constitution of the United States. (This is assignment of error No. 13, Record 132; Ruling, Record 50.)

No. 6.

Said court erred in sustaining said indictment, for that said section 215, under which said indictment was drawn, violates that provision of the Constitution of the United States, protecting citizens against cruel and unusual punishments. (This is assignment of error No. 14, p. 132, Ruling, Record 50.)

No. 7.

Said court erred in overruling defendant's petition to postpone the time of trial of this action, which motion was filed on January 9th, 1915, and in overruling the defendant's motion for the continuance of this cause filed on January 25, 1915, for that it appears that an order of this court was made on January 20, 1915, directing Geo. A. Clark to produce at Kansas City, Kansas,



where said case was proceeding, certain papers mentioned and referred to in said motion theretofore in his possession as a receiver which papers had disappeared and could not be produced, and were not accessible to defendant, and were urgently needed by him in the preparation of his defense, and defendant in the circumstances stated in said motion was entitled to a reasonable time to procure and produce secondary evidence of the contents of the same. (These are assignments of error Nos. 16 and 17, Record 133; Ruling complained of, Record 101.)

No. 8.

Said court erred in proceeding with the selection of jurors before defendant was arraigned, and erred in overruling defendant's objection to all proceedings in connection with the empaneling of jurors prior to his arraignment, and the entering of a plea; for that said defendant was arraigned in the presence of jurors and after certain jurors had been selected, who afterwards were sworn to try this action. (This is assignment of error No. 18, p. 133; Ruling complained of, Record 172.)

No. 9.

Said court erred in refusing to instruct the jury to return a verdict of "not guilty" as to the second, third, fourth, fifth, ninth and eleventh counts in the indictment; for that section 215 of the Criminal Code under which said indictment is drawn violates the constitutional right of the defendant that he shall not be deprived of his liberty without due process of law, and that such statute is not within the powers conferred upon Congress by said Constitution, and if within such powers violates that provision of the Constitution protecting the defendant against cruel and unusual punishment. (This is assignment of error No. 50, Record 140; Ruling, Record 118.)

No. 10.

Said court erred in overruling and denying the motion of the defendant filed herein at the close of the testimony to direct the jury to return a verdict of "not guilty" on the second, third, fourth, fifth, sixth, ninth and eleventh counts of said indictment; for that at the close of the plaintiff's evidence the court sustained a demurrer to the plaintiff's evidence as to the first, seventh, eighth, tenth and twelfth counts of said indictment, and such ruling of the court concluded the plaintiff as to the remaining counts of the in-



dictment. (This is assignment of error No. 49, Record 139; Ruling, Record 118.)

No. 11.

Said court erred in overruling defendant's motion in arrest of judgment; for that it appeared from the record that the indictment herein did not state facts sufficient to establish that the defendant had committed a public offense. (This is assignment of error No. 58, Record 141; Ruling, Record 128.)

No. 12.

Said court erred in overruling defendant's motion in arrest of judgment as to the second, third, fourth, fifth, sixth, ninth and eleventh counts of the indictment for that it appears from the record that the plaintiff failed as to the first count of the indictment in other respects than as to the mailing of the alleged letter, and there being a failure of proof relative to the scheme or artifice as charged in the first count of the said indictment, and the court having sustained a demurrer as to said first count the plaintiff is concluded by the judgment of the court sustaining said demurrer as to the first count from asserting the guilt of the defendant as to the other counts and upon the record a judgment upon the verdicts of the jury should be entered in favor of the defendant. (This is assignment of error No. 61, Record 148; Ruling, Record 118.)

No. 13.

Said court erred in entering judgment as it did upon the verdicts of the jury for that it appears from the face of the record that the defendant has committed no offense cognizable under any law enacted by Congress within its constitutional powers; for that section 215 of the Criminal Code insofar as it attempts to inflict punishment upon a citizen for defrauding another, or attempting to do so is wholly unconstitutional and void, and said section, if constitutional violates that provision of the Federal Constitution protecting the defendant against cruel and unusual punishment. That said section violates that provision of the Federal Constitution protecting citizens against being deprived of their liberty except by due process of law, and said enactment contained in said section is not within the powers conferred by said constitution upon Congress. (This is assignment of error No. 62, Record 148; Ruling, Record 118.)

**Errors in the Trial.**

## No. 14.

The court erred in refusing to permit defendant fully to interrogate the witness Spiesberger on cross examination relative to his interest in the prosecution of the defendant and contributions to a fund for that purpose, and to permit defendant to put in evidence and read to the jury a bulletin of the Credit Men's Association, of which witness was a member, and which the witness recalled having seen—the defendant claiming the right to show by such cross examination and bulletin the interest and prejudice of a material witness for the plaintiff.

The witness testified that he was credit man of Alfred Decker & Cohn, wholesale Clothing manufacturers of Chicago, and that the Badders Clothing Company was indebted to that firm on January 1, 1914. That his house received information that the Clothing Company was to have a big sale. That he went to Topeka and had a conversation with the defendant the day after Christmas 1913. That he had previously talked with the defendant in November, 1913, at which time the defendant bought goods for the Badders Clothing Company and said that he would pay for them about the middle of December.

The witness stated that he belonged to the National Credit Men's Association. He was then asked if this association had an official organ known as the bulletin, but was not permitted to answer. He was then asked if the Association contributed any fund to the prosecution of this criminal case and said (Record 266):

"A. That I cannot answer.

Q. What was it set aside for?

Mr. Robertson: Mr. McKeever, are you going to contend to this court and jury there has been a single cent of anybody's money spent on this prosecution?

The Court: I am talking here about this case; if the Government of the United States in the prosecution of this case to rely upon the National Credit Men's Association let us know it, I want to know it.

A. I don't know it.

Mr. McKeever: I would like to go into this.

The Court: We will not go into it, and the objection is sustained.

Mr. McKeever: Except."

The witness stated that his firm had contributed 5% of his claim and sent a check to McClintock & Guant, attorneys for the creditors of the Badders Clothing Company. The Government objected to further cross examination on this subject, whereupon the court said:

"It is not cross examination and the fact of a contribution to investigate the loss of goods or these accounts has nothing to do with the criminal prosecution."

The defendant then offered to put in evidence a bulletin of the National Association of Credit men. Whereupon the court said:

"If the Creditmen's Association has got anything to do with this prosecution or contributed anything to the prosecution of this suit, it might be legitimate, whatever they might do, in regard to bankruptcy proceedings has nothing whatever to do here.

McKeever: What I want to ask him about has nothing to do with the bankruptcy matter."

The witness was asked (Record 371):

"I will ask you if your firm have been contributing largely to the prosecution of the Badders business, and has the National Association contributed out of its prosecution fund in this case?

Whereupon the Government objected and the objection was sustained.

#### No. 15.

Under this number we group assignments of error numbers 29, 30, 31, 32, 33, 34, 35, 36 and 37 (Record 135, 136 and 137) all of which present the defendant's claim of error in the ruling of the trial court admitting in evidence the letters referred to in the several counts of the indictment upon which the defendant was indicted.

Assignment of error No. 29 is typical of the rest and will suffice to show the error relied upon as to all of the rulings admitting the letters declared upon in the several counts and in the interest of brevity we set out assignment of error No. 29 as follows:

"Said court erred in admitting in evidence Ex. 72 purporting to be the original of the letter referred to in Count 2

of the indictment, over defendant's objection that the signature of the defendant was not properly identified; that plaintiff's evidence wholly failed to show that such letter had been mailed by the defendant; that plaintiff's evidence wholly failed to show that said letter was mailed for the purpose of executing any scheme or artifice for obtaining property of the persons named in the indictment and was wholly incompetent and immaterial."

The letter set up and counted upon in Count 2 of the indictment is as follows (Rec. 815).

The Badders Company,  
Seventh and Kansas Avenue, Topeka, Kansas.

November twenty-eighth, Nineteen Hundred Thirteen.

(Stamped:) Received Dec. 1, 1913.

Spero, Michael & Son, New York City.

GENTLEMEN: Your favor of the 25th is at hand. We wish you would consider this matter further and ship the goods as we need them. We unfortunately looked at goods at too many places and when we narrowed our purchases to what we wanted all parties we had seen reported sales and this of course looked like we were buying a lot of goods. As a matter of fact we cancelled 1138 about \$12000.00 in clothing from our Fall purchases and now find ourselves short. We bought from the following houses only in New York City (All others were cancelled):

Cohen & Lang . . . . .	\$862.50
Lipps Bros. . . . .	1,941.75
J. Cohen Sons Co. . . . .	1,873.50
Robert Kamber . . . . .	1,200.00
Nipson System . . . . .	1,200.00

All goods have been shipped with the possible exception of Nipson System, whose invoice we have not received. We can use your merchandise and for that reason did not cancel it.

Will you not talk with Robert Kamber & Hoffman, J. Samuels & Bros. and call Stien-Bloch at Rochester on long distance if in any doubt as to our responsibility.

Yours very truly,

(Signed)  
G. S. B.—B.

THE BADDERS COMPANY,  
By GEO. S. BADDERS.

GENTLEMEN: Above for your information.

THE BADDERS CO.,  
G. S. B.

"Addressed to Cohen & Lang, New York City, 707 Broadway. (Return Card) The Badders Company, Seventh and Kansas Avenue, Topeka, Kansas. (Post marked) Topeka, Kansas, Nov. 28, 3:30 P. M. 1913 (Bearing a two cent stamp)."

The letter set up and counted upon in Count 3 is as follows (Record 816) :

"Stein-Bloch Smart Clothes.

George S. Badders, President.

Seward R. Graham, Sec. Treas.

The Badders Company.

Seventh and Kansas Avenue, Topeka, Kansas.

December First, Nineteen Hundred Thirteen.

Lipps Bros. 622 Broadway, New York City,

GENTLEMEN :

Please send us at once by express thirty blue serge suits your No. 6883 in following sizes :

1139	34	35	36	37	38	40
	3	5	5	5	8	4

Yours very truly,

The Badders Company

By Geo. S. Badders.

G. S. B.—B."

The letter set up and counted upon in Count 4 is as follows (Record 817) :

"Stein-Bloch Smart Clothes

George S. Badders, President

Seward R. Graham, Sec. Treas.

The Badders Company

Seventh and Kansas Avenue, Topeka, Kansas.

December 2, 1913.

H. Kamber & Co. 24 University Place, New York City.

GENTLEMEN :

Of the swatches sent us Nov. 7th you may send the following:

Size	34	35	36	37	38	40	42	44
Lot # 4328..			1	1	1	1	1	1
22285..	1	1	1	1	1	1		
4274..	1		1	1	1	1	1	
22499..	1	1	1	1	1		1	
4295..		1	1	1	1	1	1	

4299..		1	1	1	1	1		
22494..	1	1	1	1	1	1	1	
22496..			1	1	1	1	1	1
Stout 22433..				1	1	1	1	1
" 22509..					1	1	1	1
" 22491..				1	1	1	1	1
Serge 22490..	2	3	3	5	5	3	2	2
Reg. 22509..			1	1	1	1		

A total of ninety suits. If you are out of any of above a reasonable substitution will be allowed. Please rush M. D. Care Santa Fe.

Very Truly yours,

THE BADDERS CO.,  
GEO. S. BADDERS.

The letter set up and counted upon in Count 5 is as follows (Record 817) :

"Stein-Bloch Smart Clothes.

George S. Badders, President.  
Seward R. Graham, Sec. Treas.

The Badders Company.  
Seventh and Kansas Avenue, Topeka, Kansas.

December 2nd, 1913.

M. Glickman & Co. Philadelphia, Pa.

GENTLEMEN :

Your invoice Nov. 4th. Please duplicate this order for us. Also send us the best serge suit you have to offer at \$8.50 or \$9.00.

Yours very truly,

The Badders Company,  
By Geo. S. Badders.

G. S. B.—B.

If you have some close-outs in fancy, soft finish or worsted at a price send swatches.  
Send Night Telegram.

Badders Co."

The letter set up and counted upon in Count 6 is as follows (Record 818) :

"The Stein-Bloch Smart Clothes.

George S. Badders, President.

Seward R. Graham, Sec. Treas.

The Badders Company.

Seventh and Kansas Avenue, Topeka, Kansas.

December Fourth

Nineteen Hundred Thirteen.

Cohen, Goldman & Co. Broadway at Fourth, New York City.

GENTLEMEN:

Yours of December 1st. We appreciate fully the reason for the terms you suggest and under the circumstances will accept the coats for cash 9% off. Please ship half the coats giving us a line of sizes by express and let the balance come by freight.

Yours very truly,

The Badders Company

By Geo. S. Badders

We will be in the market for some trousers after our sale but will come to market on this.

Badders Co."

The letter set up and counted upon in count 9 is as follows (Record 818):

"Stein-Bloch Smart Clothes

George S. Badders, President

Seward R. Graham, Sec. Treas.

The Badders Company

Seventh and Kansas Avenue, Topeka, Kansas

December Eighth, Nineteen

Hundred Thirteen

Cluett Peabody & Co. Kansas City, Mo

Gentlemen:—

Your favor of the sixth is at hand. We wrote you several days ago asking your indulgence until the 20th inst. and advised you later of our sale which together with an increase of \$25,000 in our capital stock which will be available after December 20th will place us in a position to not only take our discounts promptly but will allow us to anticipate as well.

Thanking you, we are

Yours very truly,

The Badders Company

By Geo. S. Badders"

G.S.B.-B.

The letter set up and counted upon in Count 11 is as follows (Record 819):

The Badders Company  
Seventh and Kansas Avenue, Topeka, Kansas.  
December Eleventh, Nineteen Hundred Thirteen.

The Hartman Trunk Co. Chicago, Ills.

Gentlemen:

Please send for personal use of writer one 36" trunk your No. 256 and one 36" your No. 296.

Yours very truly,

The Badders Company  
By Geo. S. Badders.

G.S.B.-B "

The evidence offered by the Government claimed to authorize the admission of these letters upon each different count we think can be more intelligently referred to and discussed in the argument where the pages of the record where such evidence will be found is stated.

#### No. 16.

Under this specification we group assignments of error Nos. 42 to 57 inclusive (Record 138-141). Each of these assignments presents the claim of the defendant that the trial court erred in refusing to direct the jury to find their verdicts on the several counts in favor of the defendant.

Assignment of error No. 42 reads as follows:

"Said court erred in refusing at the close of all of the testimony to instruct the jury to return a verdict for the defendant on the second count of the indictment; for that, the plaintiff's evidence was insufficient to establish the guilt of the defendant as to the alleged offense charged in said count."

The others are the same except assignments of error Nos. 49 and 50. No. 49 reads as follows (Record 139):

"Said court erred in overruling and denying the motion of the defendant filed herein at the close of the testimony to direct the jury to return a verdict of not guilty on the second, third, fourth, fifth, sixth, ninth and eleventh counts of said indictment; for that, at the close of the plaintiff's evidence the court sustained a demurrer to the plaintiff's evidence as to the first, seventh, eighth, tenth and twelfth counts of said in-



dictment, and such ruling and judgment of the court concluded the plaintiff as to the remaining counts of the indictment."

Assignment of error No. 50 (Record 140), reads as follows:

"Said court erred in refusing to instruct the jury to return a verdict of not guilty as to all of the counts in the indictment; for that, section 215 of the Criminal Code under which said indictment is drawn, violates the constitutional right of the defendant that he shall not be deprived of his liberty without due process of law, such statute is not within the powers conferred upon Congress by said Constitution, and violates that provision of the said Constitution protecting the defendant against cruel and unusual punishments."

The questions arising under these specifications and assignments of error are set out in the statement and will be referred to in the argument.

No. 17.

Said court erred in refusing to charge the jury as follows:

"The court charges and instructs the jury that the defendant in this case is not on trial for the failure, neglect or refusal to pay any of his debts, nor for having given checks of any kind or character upon banks, or to creditors that have not been paid; nor for any breach of promise or inability to pay debts at any time, nor upon any charge of failing to pay up any capital stock that he may have subscribed to the Badders Clothing Company; nor upon any charge of selling any of his property or goods at any price, or for any purpose, and that as far as this case is concerned these questions are wholly immaterial except insofar and only as such matters may bear or have a bearing upon the charge in the indictment that the defendant had devised a scheme and artifice to defraud his creditors at the time charged in the indictment; and that the inquiry into these matters became necessary only as bearing solely and only upon such intent and are not to be considered or weighed by the jury for any other purpose," as requested by the defendant. This is assignment of error 60 A. (Record 141).

No. 18.

Said court erred in refusing to charge the jury as follows:

"The court instructs and charges the jury that if said note was given by George S. Badders to the Badders Clothing Company in payment of an increase in the capital stock of said corporation, to the extent of twenty-five thousand dol-

lars, and you believe from the evidence that said note was given in good faith by the defendant, Badders, for that purpose, and that said Badders at the time he executed the said note was solvent, and said note a marketable asset, then you are instructed that said increased capital stock was paid up and constituted a capital asset of said corporation and was a sufficient payment to its capital stock so increased," as requested by defendant. This is assignment of error 60 B (Record 142).

## No. 19.

Said court erred in refusing to charge the jury as follows:

"The court charges and instructs the jury that if they find from the evidence that the money taken by the defendant, Badders, from the sale and disposition of his stock of goods was by the said Badders paid out or caused to be paid out to his creditors, or in payment of other *bona fide* indebtedness and expenditures in good faith, and with the intent on the part of said Badders to apply the same in good faith to the liquidation of his debts and *bona fide* expenses incurred, then you are instructed that no presumption can arise therefrom or because of such acts and conduct of the defendant, that he intended to or had devised a scheme or artifice to defraud, as charged in the indictment, and if he did so pay out the same in good faith then you may take such facts into consideration also in passing upon the question as to whether he intended at the times charged in the indictment to devise a scheme or artifice to defraud his creditors as therein charged,"

as requested by the defendant. This is assignment of error 60 C (Record 142).

## No. 20.

Said court erred in refusing to charge the jury as follows:

"The court instructs and charges the jury that even though they may find the defendant may have taken a number of boxes of goods from the store in the month of December, and shipped the same out of the City of Topeka and stored the same elsewhere, and that all of said goods were returned afterwards to the store and replaced therein and constituted a part of the stock turned over to the receiver, then you are instructed that, so far as the creditors are concerned, the defendant had the right to do so and that the same constituted no offense in itself, and that the defendant cannot be found guilty of any crime or offense in said transaction of itself, and that such evidence was competent in the case only and solely as bearing upon the question as to whether the de-

fendant intended to and devised a scheme or artifice to defraud his creditors, as and at the time charged in the indictment; and in passing upon this question the jury may take into consideration the evidence tending to show that the defendant did so return the goods, and that he charged the value thereof to his own personal account upon the books of the corporation at the time they were taken out." This is assignment of error 60 D (Record 142).

No. 21.

Said court erred in refusing to charge the jury as follows:

"The court charges and instructs the jury that it was no crime or offense so far as this case is concerned, as to whether the corporation itself or the corporation at the instance of the defendant declared the dividends shown in the evidence or that the defendant was instrumental in causing the dividends to be declared nor as to how or in what manner it was declared, but that such facts become material only and solely in passing upon the question as to whether the defendant had devised a scheme and artifice to defraud his creditors, at the time as charged in the indictment," as requested by defendant. This is assignment of error 60 E (Record 143).

No. 22

Said court erred in refusing to charge the jury as follows:

"The court charges and instructs the jury that there is no evidence in this case from which the jury are justified in finding that any dividend was ever paid to or received by the defendant Badders, or that any commissions upon the sale of capital stock or upon the sale of merchandise in excess of fifty thousand dollars, was ever paid to or received by the defendant," as requested by defendant. This is assignment of error 60 F (Record 143).

No. 23.

Said court erred in refusing to charge the jury as follows:

"The court instructs the jury that any and all evidence in the case showing or tending to show that a dividend was declared upon the capital stock of the corporation or commissions were agreed to be paid for the sale of goods, or capital stock, or that increased salaries were agreed to be paid by the corporation to its officers, and to the defendant, was not admitted in evidence for the purpose of showing, nor is the same to be considered by the jury as any crime or violation of law in this case, but was admitted solely and only that the same might be considered by the jury as bear-

ing upon the question as to whether the defendant had devised a scheme or artifice to defraud his creditors as and at the time charged in the indictment, and they cannot be considered by the jury for any other purpose," as requested by the defendant. This is assignment of error 60 G (Record 143).

## No. 24.

Said court erred in refusing to charge the jury as follows:

"The court instructs and charges the jury that the evidence tending to show that the defendant purchased some municipal bonds and afterwards disposed of the bonds and received cash, either party in notes or party in gold from the trust company, constituted no crime or offense against the law on the part of the defendant, and so far as the creditors are concerned or affected by this case, he had a right to do so and that such evidence was admitted solely and only for the consideration of the jury in passing upon the question as to whether the defendant devised a scheme or artifice to defraud," as requested by the defendant. This is assignment of error 60 H (Record 144).

## No. 25.

Said court erred in refusing to charge the jury as follows:

"The court instructs and charges the jury that it is a matter of no importance in this case as to whether the defendant paid some of his creditors and left others unpaid, or as to whether he preferred some creditors as against others and, that if such creditors as he did pay were paid in good faith and for the purpose of discharging their indebtedness, and any and all evidence with reference to the payment of any one or more creditors, or the refusal to pay any one or more of the creditors, and all evidence as to the acts and conduct of the defendant in reference to the same were admitted in evidence solely and only for the consideration of the jury as bearing upon the question as to whether the defendant intended to or devised a scheme or artifice to defraud his creditors as and at the time charged in the indictment," as requested by the defendant. This is assignment of error 60 I (Record 144).

## No. 26.

Said court erred in refusing defendant's request to charge the jury as follows:

"The court instructs and charges the jury that in passing upon the question in this case as to whether the defendant devised a scheme or artifice for the purpose of defrauding

his creditors as charged in the indictment the jury are instructed that if from all of the evidence in the case it shall appear to them that the acts and conduct of the defendant were as consistent with honesty and good faith as with the purpose and intention to defraud as charged in the indictment, then the jury are instructed that the defendant is not guilty and they should return a verdict in his favor." This is assignment of error 60 J (Record, 144).

No. 27.

Said court erred in refusing defendant's request to charge the jury as follows:

"The court instructs the jury with reference to whether the defendant mailed the letters set out in the indictment, that if they find from the evidence that the same were mailed in pressing circumstances and financial embarrassment confronting him at the time, for the purpose and with the intent to secure extension of time, or additional goods in good faith for his sacrifice sale, with the expectation and intent that he could and would be able to meet his liabilities incurred, and were not mailed with an intent on his part in furtherance of any scheme or artifice to defraud his creditors, or to aid in doing so, then you are instructed that the defendant is not guilty in this case." This is assignment of error 60 K (Record 144).

No. 28.

The court erred in refusing defendant's request to charge the jury as follows:

"The court charges and instructs the jury that no charge of a scheme or artifice to defraud a creditor can be sustained against the defendant as to any creditor who may have shipped and billed his goods to the corporation prior to the time of the mailing of the letters mentioned in the indictment to such creditor." This is assignment of error 60 L (Record 145).

No. 29.

Said court erred in refusing defendant's request to charge the jury as follows:

"The court instructs the jury that if they have a reasonable doubt as to the guilt of the defendant then they must return a verdict for the defendant, and in this connection the jury are instructed that each individual juror must be con-

vinced beyond a reasonable doubt of the guilt of the defendant, before they should return a verdict of guilty." This is assignment of error 60 M (Record 145).

No. 30.

Said court erred in refusing defendant's request to charge the jury as follows:

"The court instructs and charges the jury that on January 22, 1914, the defendant was served with an injunction prohibiting him from disposing of any of the money or property of the Badders Clothing Company and from the date of the service of that injunction down to this date the defendant was prohibited from paying any such debts and no inference against the defendant can be drawn from the fact that none of the debts of said clothing company were paid or attempted to be paid after that time; or, that he refused to pay any creditors of the clothing company, who demanded payment of their claims after that date." This is assignment of error 60 M (Record 145).

No. 31.

The court erred in refusing defendant's request to charge the jury as follows:

"The court instructs the jury that if you find from the evidence that in the months of December, 1913, and January, 1914, the Badders Clothing Company was in fact insolvent, and was being pressed by its creditors for payment of their claims, then you are instructed that it could not make payment through its president or officers of any one or more of said claims, or allow an attachment to stand without being released for a period of five days except at the risk of being adjudged a bankrupt." This is assignment of error 60 O (Record 145).

No. 32.

The court erred in refusing defendant's request to charge the jury as follows:

"The court instructs the jury that if you find from the evidence that the immediate cause of the failure of the defendant to pay or cause to be paid, the debts of the Badders Clothing Company, arising from the purchase of the goods referred to in the indictment, was the conditions confronting him at that time, and the demands for payment for such goods that were made upon him, and that except for such conditions he would have paid for such goods, then your

verdict must be for the defendant." This is assignment of error 60 P (Record 146).

No. 33.

The court erred in refusing defendant's request to charge the jury:

"The court instructs the jury that the indictment in this action charges defendant with having devised a scheme or artifice to defraud the several persons, partnerships and corporations named in the indictment, and other persons to the grand jurors unknown, of goods, wares, merchandise and property of value by means of false and fraudulent pretenses and promises, and you are therefore instructed that evidence tending to show that the defendant converted money of the Badders Clothing Company to his own use, does not sustain this charge." This is assignment of error 60 2 (Record 146).

No. 34.

The court erred in refusing defendant's request to charge the jury as follows:

"The court instructs the jury that the stock of goods in question was the property of the Badders Clothing Company and not of the creditors and the Badders Clothing Company had a right to sell the same or any portion of the same for any price that they saw fit, or to otherwise dispose of the same as they saw fit; and the creditors have no right to interfere therewith, so far as this case is concerned, and any and all evidence introduced with reference to that subject, was admitted solely and only for the purpose of bearing upon the question as to whether the defendant devised a scheme or plan to defraud his creditors, and at the time stated in the indictment." This is assignment of error 60 R (Record 146).

No. 35.

The court erred in refusing defendant's request to charge the jury as follows:

"The court instructs the jury that as to any sales of merchandise made to Voiland, Mills, or to August, that the defendant had the right to sell said goods to said parties when he did sell them, and to sell them for such price as he saw fit, and that the evidence concerning those matters was admitted only for the purpose and as bearing upon the question as to whether the defendant devised a scheme or artifice to defraud his creditors, as and at the time stated in the indictment and in this connection you are further instructed that



if said goods were sold at a reasonable price under the conditions existing at the time, having regard to the character of the goods, then you are instructed that no presumption of improper intent can arise therefrom as against the defendant." This is assignment of error 60 S (Record 146).

No. 36.

The court erred in refusing defendant's request to charge the jury as follows:

"The court instructs the jury that if you find from the evidence that the Badders Clothing Company after the completion of the sale was in good faith intending to continue in business, and had made arrangements for new wares, cutting down the space in their old place of business, and ordering fixtures and arranging for the continuance of business, then you are instructed that you must take such facts into consideration in passing upon the question as to whether or not defendant had any intent to defraud his creditors as and at the time charged in the indictment." This is assignment of error 60 T (Record 147).

No. 37.

The court erred in refusing the defendant's request to charge the jury:

"The court instructs the jury that any transaction or conduct by the defendant, Badders, as between himself and the Badders Clothing Company, or the handling of its cash funds, or goods in the manner shown by the evidence, is a matter of no importance to the Badders Clothing Company, and the question as between the clothing company and Badders is not at issue in this case, and he cannot be convicted for any transactions had between himself and the company, or for any alleged breach of duty between himself and the Badders Clothing Company, and any and all transactions between himself and the Badders Clothing Company were admitted in evidence only and solely as bearing upon the question as to whether the defendant intended to defraud the creditors at the time as charged in the indictment, and is to be considered by them solely and only as bearing upon that question." This is assignment of error 60 U (Record 147).

No. 38.

The court erred in refusing defendant's request to charge the jury as follows:



"The court instructs the jury that it appears in evidence that in 1911 a previous bankrupt sale was conducted by the Badders Clothing Company in the same building at Topeka, Kansas. You are instructed therefore, that if you find that as to said sale that Badders had informed his creditors thereof, and that the same was freely advertised as a sacrifice sale in the newspapers and resulted in a sale of goods so that the Badders Clothing Company was enabled as a result thereof, to pay up all of its debts and continue in business thereafter, and that said sale was begun in a similar manner to the sacrifice sale in question made in December, 1913, and that the sale in December, 1913, was to be had and conducted in similar circumstances and conditions as to that of 1911, then you may take such facts into consideration in passing upon the question as to whether the defendant had devised any scheme or artifice as and at the time charged in the indictment to defraud his creditors, as charged in the indictment." This is assignment of error 60 V (Record 147).

No. 39.

The court erred in refusing defendant's request to charge the jury as follows:

"The court charges and instructs the jury that even though they may find that the defendant did all the things and performed all of the acts charged in the indictment against him, in the manner and form as charged therein, still they are instructed that said acts and transactions of themselves do not prove that the defendant had the intention to form a scheme or artifice to defraud his creditors as charged in the indictment, and notwithstanding you find all of said facts to be true, still defendant cannot be convicted unless you find that he had an intention as charged in the indictment to defraud his creditors, and that the doing or performing of all or any of the acts charged in the indictment constituted no crime on the part of the defendant unless the jury either believe that it was the original intention of defendant at the time and in the manner charged in the indictment, to defraud his creditors and persons as therein charged." This is assignment of error 60 W (Record 148).

No. 40.

The court erred in refusing defendant's request to charge the jury as follows:

"The court charges and instructs the jury that in considering the question as to what became of the funds taken in by the company at the sale, they may take into consideration the amount shown from the evidence to have been necessarily

expended by the defendant in defending the corporation in the bankruptcy proceedings, as well also as the expenses incident to the sale, and any and all amounts that the corporation may have paid out to creditors or paid in liquidation and the satisfaction of debts for which the corporation might be liable."

This is assignment of error 60 X (Record 148).

### **History of the Case.**

At the close of all of the testimony the defendant requested the trial court to direct the jury to return a verdict of "not guilty" on each of the remaining counts of the indictment (Record p. 110). This request was refused (Record p. 118) and the defendant complains of this ruling.

The undisputed facts established by the testimony are as follows:

Prior to 1911, Robinson and Marshall, a partnership, carried on a retail clothing business on a prominent corner in Topeka, Kansas, for a period of some ten years. Upon the death of Mr. Marshall the Marshall Clothing Company was incorporated under the laws of Kansas with a paid-up capital stock of \$60,000 to continue the business. The entire capital stock was owned by Mrs. Marshall and a Mr. Andrews, except three shares, which were held by three persons to qualify them as directors. In October, 1911, the defendant, then a young man twenty-nine years old, who had lived in Topeka all his life and then had been Secretary of the Topeka Commercial Club for three years (Record 633) determined to acquire an interest in this business. He consulted with Mr. John R. Mulvane, President of the largest local bank, and received encouragement and promises of financial assistance (Record 634). He then went to Rochester, New York, to see the head of the Stein-Bloch Company, a large clothing manufactory, in regard to the matter, and in October, 1911, Mr. Guggenheim, Manager of the Stein-Bloch Company, came to Topeka and Mr. Isaac Frankenstein the person suggested by the Stein-Bloch Company as a suitable partner for the defendant (Record 634 & 645). Mr. Guggenheim, a man of wide experience in the clothing business, examined the stock of goods of the Marshall Clothing Company, which was inventoried at about \$88,000 to \$90,000 and pronounced it the worst stock of clothing he ever saw (Record

405) and advised the defendant and Frankenstein to have nothing to do with it. At that time the Marshall Clothing Company owed about \$45,000 (Record 635). Notwithstanding this advice, the defendant purchased the capital stock of the Marshall Company from Mrs. Marshall and Mr. Andrews, paying therefor \$30,000 partly in cash of his own, part secured by his note and part the funds raised through Mr. Rinehart who went into the business with him (Record 635).

Previous to this time the defendant had had no experience whatever in the clothing business. He went into possession of the clothing store on November 8, 1911 (Record 636). Very soon thereafter he inaugurated what is known in the evidence as a "sensational" or "Bankruptcy sale" common to businesses of that character, freely advertising an intended sale of the goods at greatly reduced prices. It further appears from the testimony that it is not an uncommon practice for such merchants to purchase goods, especially for such sales and in this case the defendant purchased a lot of over-coats to mix with the other stock in contemplation of the sale, the stock containing a sufficient quantity of suit, etc. These purchases consisted of what is known as "close-outs" (Record 637) cheap goods left over in the hands of manufacturers and jobbers who prepare winter goods in the spring and summer and expect to sell them in the spring for the following fall delivery. It happens occasionally that orders are cancelled, etc., and what are termed "close-outs" are left in the hands of manufacturers and merchants. These close-outs are purchased in the late fall and winter at greatly reduced prices. The sale was conducted by a concern located in Syracuse, New York, and known as H. L. Gilmore & Company, commercial adjusters (Record 444, 445). This firm sends expert salesmen to the place of the sale and the goods are sold under what is termed in the evidence "high pressure" (Record 445). As a result of this "sale" which lasted about six weeks, about \$60,000 (Record 616), was realized out of which the defendant forthwith paid about \$48,000 of debts (Record 637) due to Eastern wholesale clothing concerns to whom the Marshall Company was indebted at the time he took over the stock of goods and assumed the liabilities. Soon after the sale he again called on the Stein-Bloch people at Rochester, New York and at their suggestion entered into an arrangement with Mr. Isaac Frankenstein by which the name of the Marshall Clothing

Company was changed to the Badders Clothing Company, the capital stock reduced from \$60,000 to \$25,000 (Record 610) one-half of which was sold to Mr. Frankenstein for \$10,000 (Record 638).

At the time of this transaction the Stein-Bloch people loaned Mr. Frankenstein \$7,500 of the \$10,000 which he put in the business (Record 638). At the time Mr. Frankenstein came to Topeka and went in with the defendant in this business the stock of goods was fairly good, although some unsaleable stuff was still left (Record 611). Of this, 550 suits of clothes were sold to a local dealer in old goods of this character at an average of \$1.27 a suit (Record 611).

Mr. Frankenstein continued in the business until May, 1913, at which time the defendant bought out Mr. Frankenstein's interest, the Stein-Bloch Company accepting the defendant in lieu of Mr. Frankenstein on the note for \$7500 which Frankenstein had given to raise money to buy an interest in the business. By this arrangement the defendant became the owner of the entire capital stock of the Badders Clothing Company except four qualifying shares issued to others to serve as directors.

When the arrangement between Mr. Badders and Mr. Frankenstein was consummated they purchased of the Stein-Bloch people some \$14,000 worth of merchandise (Record 639). The purchase and selection of this merchandise was done by Mr. Frankenstein. About February 5, 1913, the defendant Frankenstein and the Stein-Bloch Company entered into an arrangement by which the defendant agreed to increase the capital stock of the Badders Clothing Co. from \$25,000 to \$35,000 and to pay the increase in cash, all of which was to go to the Stein-Bloch Company (Record 801). This arrangement finally was consummated by amending the Charter as of February 19, 1913, of the Badders Company, thereby increasing its capital stock from \$25,000 to \$35,000 all of which was subscribed by the defendant and paid for in cash, the money being sent to the Stein-Bloch Company (Record 423).

At the time this increase was made and the money sent to the Stein-Bloch people it was arranged between them that the Stein-Bloch Company was to ship a season's shipment of goods with one season's payment (Record 802, 641, and 642).

In October, 1913, the Stein-Bloch manager was again in Topeka and again requested the defendant to increase his capital

stock and on November 13th, 1913, pursuant to the laws of Kansas relating to the amendment of corporate charters, the defendant caused to be filed in the office of the Secretary of State a notice of the increase of the capital stock of the Badders Company from \$35,000 to \$60,000, thus restoring the capital to the original amount when it was bought from the Marshall Clothing Co. (Record 760, 761), the certificate filed in the Kansas Secretary of State's office showing that the whole amount of the increase was subscribed by the defendant (Record 761). At the time of making this increase the defendant gave his note payable to the Badders Company for \$25,000 for his subscription to the increased capital. In the meanwhile the defendant had sold some of the capital stock issued to him, one share each to a number of prominent Topeka people who took the stock upon an agreement with the defendant guaranteeing them 6 per cent and to re-purchase the stock at any time on thirty days notice (Record 797). At the time the capital stock of the Badders Company was increased from \$35,000 to \$60,000, the company was solvent (Record 652), had never had any difficulty with any creditors, no drafts had ever been drawn upon it by creditors, and no trouble of any kind experienced.

In the spring of 1913 the defendant ordered a large amount of goods for fall delivery. After these orders were placed, the Felix Clothing Company, a local competitor in Topeka of the Badders Company, failed, and a sale of their stock of goods was precipitated in the late summer or fall of 1913 (Record 648, 649). When this sale was known to be imminent the defendant cancelled between \$15,000 and \$20,000 of the orders which the Badders Company had made in the spring for fall delivery (Record 616-653). He endeavored to cancel an order placed with the Stein-Bloch people, but they would not accept the cancellation (Record 648-653). The Felix Clothing Company's sale was held in October, 1913, conducted by the same expert, Gilmore & Co. (Record 617), and from a furnishing goods standpoint was a success (Record 649). Immediately following the Felix Company's sale the defendant determined to have another sale for the Badders Company (Record 649-618). At that time business had not been good with the Badders Company and the defendant and Mr. Guggenheim conferred as to the propriety of cutting down the store space, and in this connection the defendant arranged with the United Cigar Store Company to take a corner space out of the store so as to cut down his expenses but this ar-

rangement was not carried out because of the opposition of the Stein-Bloch Company (Record 775, 776), which finally ripened into that Company requiring the defendant to enter into a contract not to assign any portion of his lease without consent of Stein-Bloch Company's consent.

After cancelling the orders for fall goods the Badders Company did not have on hand a sufficient quantity of goods of the kind necessary to carry on a "sale" (Record 653-618). Accordingly, the defendant and one of his employes went East early in November to purchase goods for the contemplated sale. They looked at goods for sale purposes only (Record 654-618), and were seeking "close-outs" or "left-overs" which could be bought at a lower price than they could have been bought for in the previous spring. Prior to taking this trip the defendant reported to the Mercantile Agencies, with reference to the condition of the Badders Company. To these agencies the defendant reported that the increased capital was represented by notes (Record 317). The representative of R. G. Dunn & Company learned of the increase through the certificate filed in the Secretary of State's office. The Bradstreet report (Record 778), shows as an asset the \$25,000 note.

During this trip in the East the defendant purchased about as much goods as he had cancelled orders for of a kind requisite to fill in the stock for the sale (Record 620). On December 3, 1913, defendant addressed a general letter to the creditors of the Clothing Company advising that the store would be closed until Friday "When we start a very sensational sale, in fact our first advertisement will probably be headed 'on the verge of bankruptcy'" (Record 767), and thereupon the defendant inaugurated a sale of the same kind he had successfully conducted in the winter of 1911 and 1912. The season was very poor and the sale started off pretty well but did not realize expectations. This sale was in charge of H. L. Gilmore & Company the same parties who had conducted the successful sale two years before through their representatives. Mr. Stern and Mr. Adler (Record 660), who suggested the advertising, and had complete charge of the matter. About the middle of December the defendant talked with Mr. Stern about the sale not going very well and at his suggestion some of the higher priced goods were removed from the main floor (Record 660) and another cut in price made. Mr. Stern suggested to the defendant that the higher priced goods possibly could be disposed of in either Kan-

sas City or St. Joseph, and suggested shipping such goods to those places, and following this suggestion (Record 661) fourteen cases of the high class merchandise were shipped to Kansas City and St. Joseph where they were not sold but remained in storage until the latter part of January when they were returned in the same cases in which they had been shipped. The sale produced only about \$38,000.

During the latter part of November and beginning soon after the sale, various creditors began pressing for payment of their claims. Some of them placed their claims in the hands of attorneys in Topeka and suits were brought. At about that time the defendant's wife—they had been married in 1912—was confined under distressing circumstances and their baby was born early in January, 1914. During the latter part of December and the early days of January representatives of the creditors were in and about the store and out to the defendant's house almost daily. On January 21, 1914, a petition in bankruptcy was filed against the Badders Company by three of its creditors. On January 22, 1914, an injunction was served upon the defendant enjoining him from disposing of any of the money or property of the Clothing Company. This injunction remained in force up to and including the time of the trial. Prior to the bankruptcy proceeding the defendant, out of the proceeds of the sale of the moneys in his hands, made the following payments (Rec. 668):

To Rosenwald & Weil \$229.73; Stein-Bloch Company \$1-866.88; Bank of Topeka \$4,000; Merchants National Bank \$1,200; commissions to clerks \$515; W. A. Byers \$11,500; on account of note for borrowed money owed by the defendant \$1,500, which Mr. Byers paid on defendant's note at Bank of Topeka, \$3,000 owing on his home; \$2,000 for lots on College Avenue. Mr. Byers was well to do, then being worth \$50,000 or \$60,000, amply able to respond to any claims against him (Rec. 669). The defendant also paid advertising accounts amounting to about \$1200, freight, stationery and other items to the amount of \$600; \$200 taxes, a deposit with his counsel \$3,000, making in all about \$35,000.

Previous to the sale defendant paid about \$35,000 by which he took up the stock of the other stockholders and paid a note of \$2500 to a Mr. Graham and other money to various creditors of the Clothing Company and testified (Rec. 686) that he deposited \$5,000 as security on account of Jno. R. Mulvane becoming surety on the appeal bond of the Badders Clothing Company in the bank-



ruptcy proceeding, and testified that he had paid out everything that he had on claims actually due to creditors of the Clothing Company and of his own.

The testimony shows that in May, 1913, at a meeting of the Board of Directors, after Mr. Frankenstein had severed his connection with the company, a dividend of 25% on the capital stock was declared, and an increase of the defendant's salary allowed, and commissions also allowed on account of his having increased the capital stock from \$25,000 to \$35,000. Again, in November, 1913, a dividend was declared and the defendant allowed a commission of 5% on sales in excess \$50,000. Commissions also were allowed the secretary.

The defendant explains these resolutions of the Board of Directors as follows (Record 645):

"Q. Now there is in testimony Mr. Badders a matter of you and Mr. Burdick and Mr. Boyd meeting there in the basement, so-called, of this first story, I think the Government calls it the basement, and that there was a meeting of the directors, so-called, of the clothing company in which there was a dividend of twenty-five per cent declared on the capital stock and a commission voted to the President on sales over fifty thousand dollars, or such a matter, and an increase of five thousand dollars of salary, and I think also a commission to the secretary. I wish you would state to the jury what consideration induced you to bring about that matter or have that done if that is the fact?

A. Well, I had worked hard in building up this business, and had it in a good, sound financial condition, and was contemplating at that time, in fact had negotiations on for bringing another partner into the business. I had never drawn any commissions or dividends or anything of that sort from the business, and I felt that whoever came into the business should pay me for my services in building up that business, taking it under the circumstances in which I did and putting it on a sound financial basis, and these things were put on the books at that time so that whoever came into the business would know what I expected him to pay me for my services in building up the business, and that a minute was made of all of these matters.

Q. Referring to this matter of these dividends and commissions Mr. Badders, was it your purpose at that time to withdraw any of those sums from the business?

A. No, sir.

Q. Did you ever withdraw any of these funds?



A. Never.

Q. Did you ever, Mr. Badders, pay yourself or cause anybody in the Badders Clothing Company to pay you any of this money or commissions or dividends voted to you at that time?

A. Never, no, sir.

Q. Did you ever receive it?

A. No, sir."

All of which is wholly uncontradicted and it is a fact that no dividends or commissions were paid to defendant.

The evidence tends to show that at the time the bankruptcy proceeding was filed, Badders Clothing Company was indebted to various wholesale merchants to the amount of about \$70,000.

Sometime in April, the stock of goods remaining after the sale inventoried by the receiver, as was sold by the receiver appointed in the bankruptcy proceeding for \$16,000 cash.

The testimony tends to show that the sale in the early spring of winter clothing was very disadvantageous and that at such sales only a small percentage of the actual value of the merchandise can be expected to be realized. The evidence shows that the accounts receivable of the Clothing Company had a face value of about \$18,000, and that Mr. Badders' note of \$25,000, given for the subscription to the capital stock would have been available security for a loan of \$10,000. This is stated in the deposition of John R. Mulvane, President of the Bank of Topeka (Record 105).

The testimony further shows that there was deposited as security for the creditors \$5,000 in money, the aggregate of these items at their face value and estimating the value of the stock sold by the receiver at twice the amount it was sold for is \$65,000, which together with the attorney fees and other expenses which the defendant had to pay indicates that while in bankruptcy the Clothing Company may not be able to pay its creditors, yet, at the time of the service upon the defendant of the injunction there was property assets of various kinds which might have been expected to prevent the disaster with which he was finally overtaken.

The testimony shows that a young man took over a business in poor condition and by his efforts succeeded in paying all of the debts by conducting a successful "sale" and who, again undertook to do the same thing a second time, and that his failure to pay his creditors is due directly to the fact that his sale did not equal his expectations. That he failed because of business reasons, and used all of the funds and resources at his

command for the purpose of paying creditors, and is not shown to have received any advantage whatever in the transaction. The evidence shows that to such of the creditors as were pressing in December and early January the defendant asked time to make a statement and the evidence of his bookkeeper is to the effect that at the time of the bankruptcy proceeding he was engaged in an effort to balance the books and make a proper financial statement (Record 309). The intervention of bankruptcy proceedings, of course, stopped any further efforts of any kind and effectually completed the defendant's ruin.

While upon these facts it necessarily follows that whatever use the defendant may have made of the post office establishment is wholly immaterial. Yet we state what is claimed by the Government he actually did by way of using the post office, is the mailing of the letters, copies of which are set out in the several counts of the indictment. These letters will be found in the record as Exhibits 72 to 81 (Record 815 to 819 inc.). These letters also appear in the specifications of error of this brief immediately preceding this statement (p. 23).

However, the government introduced in evidence about thirty (30) other letters claimed to have been written by the defendant which do not appear in the indictment. These letters all appear in the record beginning on page 762. Aside from two or three letters written to the Stein-Bloch Company early in 1913 this correspondence took place between the middle of November, 1913, and the middle of January, 1914. These letters may be summarized as follows:

On November 28, 1913 (Record 762) a letter was addressed to the Globe Knitting Works, Grand Rapids, Michigan, remonstrating against the sending of an account through an agency for collection and stating:

"We have completed arrangements for increasing our capital stock \$25,000.00 in fact the amount has been subscribed and your account will be paid December 20th on a net basis if you demand it. We believe, however, you will see our position and we look for your advice to discount your statement on December 20th."

Another letter to the Gloversville Auto Glove Co., Gloversville, N. Y., dated December 8, 1913 (Record 762) states:

"We are pleased to advise you that we have perfected arrangements for increasing our capital stock \$25,000. You can look for payment of your account December 20th."

Another letter on December 5, 1913 (Record 763) to J. & M. Wolf, New York City, in which appears the statement:

"We have just increased our capital stock \$25,000.00 and will not only be in position to discount promptly but will also be in a position to anticipate future statements."

Another letter to Rose Brothers, New York City, dated November 23, 1913 (Record 764) states:

"We are pleased to advise you that we have perfected arrangements for increasing our Capital Stock \$25,000.00 in fact the amount has been subscribed and we will take care of your account at the earliest possible moment which will not be later than December 20th."

Another letter to Gotham Mfg. Co., of Troy, N. Y. dated December 5, 1913 (Record 765) states:

"We have arranged to increase our capital stock \$25,000 and are also figuring on our sale and wish you would advise us the very best discount you will allow on December 20th."

Another letter to Robischon & Peckham Co., of New York City, dated December 5, 1913 (Record 765) states:

"Your favor of the third is at hand and we appreciate your indulgence until the 20th. You will hear from us promptly at that time. You will be pleased to learn that we have just increased our capital stock \$25,000.00 and now have \$60,000.00 capital."

Another letter to Schwartz & Jaffee, New York City, dated December 4, 1913 (Record 766) states:

"We have your favor of the 28th ultimo and in reply beg to advise, as you have already doubtless learned through the mercantile agencies, that we have increased our capital stock to \$60,000.00 and this together with receipts from sale which starts tomorrow will place us in position to not only meet our discounts promptly but to anticipate as well."

The other letters are chiefly orders for small quantities of goods such, for instance, a letter of December 6, 1913 to the Pioneer Suspender Company of Chicago (Record 766) saying:

"Please rush order for suspenders given you recently by our Mr. Boyd."

Another letter to the same firm (Record 767) dated December 4, 1913, asking the immediate shipment of the balance of garters.

Another letter to Maurice Lesser & Co., of New York City, dated November 28, 1913 (Record 768) referring to a letter from that firm of November 6, 1913, and stating:

"Please send us 30 coats of your No. 2521 black gaberdine in following sizes:" (here follow sizes).

Another letter of the same general character dated November 26, 1913 to Jacobs & Harris of New York (Record 769).

Another letter of November 12, 1913 (Record 769) to Rose Brothers of New York City, of the same character.

Another letter of November 12, 1913 to the Gloversville Auto Glove Company asking them to duplicate the order of September 20th and to rush it (Record 770).

Another letter of the same kind to Kohn Bros. & Co. of Cleveland, Ohio, dated November 12, 1913 (Record 770) ordering 25 coats.

Another letter of the same kind to Rice Stix D. G. Co., of St. Louis, dated November 1, 1913 (Record 771) saying:

"Our recent order for white shirts with attached and detached collars. Please rush and advise."

Under the date of December 3, 1913 (Record 771) the following general letter was sent:

"For your information we wish to advise you that our store will be closed until Friday when we start a very sensational sale, in fact our first advertisement will probably be headed 'On the verge of bankruptcy.'

We wished to advise you of this as you will undoubtedly hear of our sale through the trade journals. Dun and Bradstreet are familiar with details."

Another letter of December 11, 1913 (Record 772) to the Stein-Bloch Company states:

"Will get at those daily reports Sunday and get them up to date. Sale going slow account warm weather. Will try and get some ginger into it tomorrow and Saturday."

Another letter dated May 29, 1913 (Record 772, 773) addressed to Geo. Guggenheim, Esq., of the Stein-Bloch Company of Rochester, New York, follows in full:

N. Y.

DEAR MR. GUGGENHEIM: I am pleased to advise you that Mr. S. will succeed Mr. Frankenstein as Secretary-Treasurer of the Badders Company effective this date. Mr. Graham has purchased \$2,500 in stock and will take more later. He will spend several days each month in Topeka for the 1090 present and expects later to move here (832). I certainly appreciate the favorable report your company made to Mr. Graham on The Badders Company and myself. You will never have cause to regret the confidence you have reposed in me.

It is with considerable personal pride that I call your attention to the inclosed list of stockholders, who have taken one share each (\$100.00 par value) in our Company. For your personal information I have placed opposite their names an estimate of their personal worth.

With the co-operation of Mr. Graham and this splendid list of the best men in the City of Topeka as stockholders and boosters nothing can stop the Badders Company from taking her place among the leading clothing stores of this section.

With kind personal regards to Mr. L. N. Stein and yourself, I am

Very truly yours,

GEORGE S. BADDERS.

*Stockholders in the Badders Company Holding One Share Each:*

Robert Stone, Lawyer.....	\$ 75,000
N. B. Burge, Investments.....	50,000
E. L. O'Neil, Lawyer.....	15,000
C. A. Moore, Life Insurance.....	20,000
Arthur Capper, Publisher.....	400,000
J. Will Kelley, Sec'y Commercial Club.....	20,000
L. W. Wilson, Realty.....	30,000
E. R. Simon, Ex County Attorney.....	25,000
C. B. Burge, City Clerk.....	12,000
F. M. Newland, City Commissioner.....	25,000
H. L. Cook, Sec'y State Fair Ass'n.....	50,000
Scott Hopkins, Pres. Prudential Trust Co.....	50,000
S. E. Cobb, Vice-Pres. Bank of Topeka.....	75,000
O. J. Wood, Attorney Santa Fe Ry.....	40,000
W. B. Collinson, Chf. Clerk, Gen. Mgr., Santa Fe	15,000
H. B. Lautz, Ass't Gen. Mgr. Santa Fe.....	25,000

1091	E. L. Copeland, Sec.-Treas. Santa Fe R'd .....	75,000
	S. G. Stewart, Physician .....	40,000
	John S. Dawson, Attorney General of State...	25,000
	J. B. Larimer, Lawyer .....	30,000
	T. A. Borman, Publisher (Former Pr. Continental) .....	30,000
	J. B. Doncyson, Ass't Sec'y Scottish Rite Bodies	15,000
	L. L. Kiene, Sheriff (County) .....	15,000
	W. W. Mills, Merchant (Dry Goods) .....	300,000
	H. M. Bomgardener, Undertaker .....	15,000
	Frank B. Parker, Life Insurance .....	15,000
	L. F. Garlinghouse, Realty .....	30,000
	E. B. Whitmore, Realty & Treas. Knights & L. of Security .....	35,000
	J. S. West, Justice Supreme Court of State .....	30,000
	Omer D. Smith, Steno. and Clerk " .....	2,000
	Z. G. Hopkins, State Labor Commissioner .....	15,000
	Geo. W. Painter, Secretary Masonic Lodge # 51	15,000
	Egbert L. Whitney, Chief Operator Rock Island Office .....	15,000
	C. W. Hanchette, Manager Woolworth's 5 & 10c store .....	40,000
	Arthur J. Carruth, Jr., Reporter State Journal ..	7,000
	Glenn M. Bryan, Chf. Clk. Eng. Dpt. Santa Fe ..	2,000
	Geo. W. McClelland, Grocer .....	6,000
	F. O. Burket, Dentist .....	30,000
	J. A. Steinmeyer, Dentist .....	75,000
	Geo. M. Crawford, Publisher .....	50,000
	J. L. Vincent, Clerk Capper Publications .....	6,000
	W. E. Stevens, Clerk Gas Co .....	2,000
	J. L. Work, Physician .....	10,000
	C. M. Lawrence, Manager Wold Packing Co. ....	20,000
	Geo. H. Hoyes, Sec'y Y. M. C. A. ....	50,000
	S. G. Zimmerman, Aud. Capper Publications ...	25,000

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\$2,257,000.00

I expect to complete this list to fifty names.

G. S. B.

The Government introduced in evidence a letter of December 24, 1913 (Record 792) purported to have been written by Seward Graham, addressed "Dear Al" (meaning Alfred Decker of Alfred Decker & Cohn, wholesale merchants of Chicago) as follows:

December 24th, 1913.

DEAR AL: I guess I wrote you at the time I took stock in the Badders Clothing Company the amount of stock I bought.

Also if I remember correctly I wrote why I took the stock, namely: to secure as I supposed a good account in Topeka. I had \$2500 in stock. I figured this way. Even if the stock didn't make any money I could sell him enough goods in a few years to get this money all back and interest. After being there ninety days I realized he was in bad shape. He was top heavy on expense and as Stein-Bloch had loaded him to the guards on high priced goods and he was owing them a good deal of money I felt I was connected with a sinking ship, and I went to Mr. Badders and told him just what I have written you here. It was a current report among traveling men that I had a controlling interest as I had been directing to a certain extent the policy of the store and when the inquiries as to the financial condition of the Badders Company came I felt that with the small interest I had in the Company didn't care to have my credit impaired in any way so I asked Mr. Badders to buy my stock as I was  
1109 the innocent party in this deal and he bought my stock giving me his 120 day note for the same but asked me to say nothing about this until after the first of the year as he was going to try to reorganize his business. I had sold him goods from Michael-Stern & Co. and had also told them at the time I took the stock why I was taking it and when I sold out to Mr. Badders I said to him that inasmuch as I was a stockholder in the concern no matter what happened I wanted Michael-Stern paid in full and he agreed to do this verbally and I know it will be taken care of as he is a mason and on the square. Now he is in deep water and I don't believe will be able to pull through. He feels very kindly towards you and your line of goods and I have told him the story in full of the history of your business, my connection with the same, etc. and that you also were one of the few of my real friends in life and I feel sure from what Mr. Badders said to me when I sold him my stock that he intends to continue your line of goods after his reorganization and also that he intends to pay your account in full. I give you this information in confidence as I felt it was due you from my hands.

With the season's best wishes, I am,

Yours very truly,

SEWARD R. GRAHAM.

And evidently, for the purpose of showing that this letter of Mr. Graham to Mr. Alfred Decker was written with the knowledge and consent of the defendant, and binding upon him in some way also offered in evidence a letter of the defendant's dated January 15, 1914 (Record 793 and 794) as follows:

The Badders Company,  
Seventh and Kansas Avenue, Topeka, Kansas.

January Fifteenth, Nineteen Hundred Fourteen.

Attention Mr. Decker:

Alfred Decker & Cohn, Chicago, Ill.

GENTLEMEN: Your wire of the 14th inst. "Have been worrying about our account owing to the many rumors prevailing on the other hand I have before me your wire 1110 promising upon your honor as man to man and which I look upon as being as good as the money received would like to get the money now urgently in need of it when can you send it?" came as a very great surprise to the writer. My wire you refer to was as follows: "Your wire date. Circumstances over which I have no control prevent remittance at this time. Delay on your part will not prejudice your rights in the matter. My word as man to man for this." Your construction of this as a promised payment, especially in view of what has transpired since the sending of this wire, is entirely erroneous. Although the wire does not promise payment, but only states that delay would not prejudice your rights, I will say that had you taken me at my word I would have been perfectly willing for you to have construed it into a personal promise of payment, and your account would have been paid by me personally? This would have been done because of your apparently very friendly attitude toward me personally during all our business transactions. That you did not consider my personal desire to see you paid is evidenced by your sending Mr. Spiesberger to Topeka after your receipt of the wire you refer to. And even after you sent Mr. Spiesberger to Topeka I told him I would personally guarantee the payment of your account and he in no uncertain terms unequivocally and unhesitatingly refused to accept my personal promise and he even went so far as to reply in response to my expression of friendliness to you personally at our parting in hotel that the same feeling did not exist between himself and I. It is true that he tried to smooth over the extremely rough way he tried to handle me in hotel by calling with Mr. Wheeler at the store but one does not so soon forget the attitude he took toward my company and especially toward me personally and although he finally left me with his good wishes I have not forgotten the hotel talk, of which he can inform you more if he so desires. Furthermore your wire of December 29th (partly as follows) "please do so and spare us the unpleasantness of taking action" would indicate that you were entirely in accord with Mr. Spiesberger's treatment of the matter and would further indicate that you were 1111 not looking to me personally for payment.



I hesitate about mentioning Mr. Graham's name in this connection, because of the personal relation I understand exists between Mr. Graham and yourself, but perhaps it is pardonable for me to state that I asked Mr. Graham to convey to you the information that I expected to see Alfred Decker & Cohn paid and he showed me the letter he wrote doing this. Mr. Spiesberger first said no such letter had been received and later said he had it in his possession but that it was my personal statement only conveyed by a third party and he did not consider it as having any particular bearing on the case.

I might say at this time that I am glad that you did not consider this letter of Mr. Graham as being in any sense a guarantee of the account or even a binding personal statement of mine because the letter was written by Mr. Graham purely at my instance and request and after he had severed his connection with the Company and had absolutely no interest in it other than because of his and Mr. Decker's personal relations he asked me to do the right thing with them and because of Mr. Graham's request I attempted to go further with you than with any other creditor of the Badders Company and tried to show you that I wanted to personally guarantee payment of this account but you absolutely refused to accede to my desires and would not accept any personal assurance from me and it hardly behooves you now to even mention it, indeed I am, as stated, very much surprised at your presuming to make me believe you had placed any credence in my personal statement.

On account of the manner in which Mr. Spiesberger has handled this matter I do not feel that you have the slightest reason for looking to me personally for any kind of assurances at this time and I can only state that it is for your own good judgment to direct you as to your future attitude and procedure in the premises. I am of course very sorry that you could not have placed a little confidence and good faith in me, especially after our several conversations in which you should have gained a little knowledge as to my personal  
1112 reliability and trustworthiness, but you as a business man must judge these things for yourself and time alone will advise you of your erroneous estimate of the writer.

In closing I wish to assure you that the above letter is a business communication and even now I have the most friendly feelings toward you personally, because deep down in my heart I do not feel that Mr. Spiesberger expressed the attitude of Alfred Decker as I have learned to know Mr. Decker, and I am sincere in the belief that before long you will have understood the situation here and our personal and

business relations will be a bit closer than they have been before.

With kind personal regards, I am,

Yours very truly,

GEO. S. BADDERS,  
*For The Badders Company.*

G. S. B.—B.

The Bradstreet statement referred to in these letters was introduced in evidence and appears on page 778 of the record. It shows assets including bills receivable of \$25,000 amounting to \$91,000 and liabilities amounting to \$35,000. This statement is dated November 28, 1913.

The government put upon the stand several witnesses whose testimony tended to show that after December 20, 1913, several of the Clothing Company's creditors sent representatives to Topeka who demanded payment of their claims, and that the defendant put them off and evaded payment in various ways, promising some of them to pay in a few days, and preferring some of them in small amounts.

Also evidence tending to show that early in January defendant had in his possession some \$7,000 in cash which he converted into municipal bonds, and afterwards sold the bonds and received the cash. The defendant's explanation of this is that he used this money for the purpose of securing a surety on the Clothing Company's appeal bond, and also for the purpose of taking up claims against him.

The government introduced in evidence the statement of the Clothing Company's account with the Bank of Topeka showing that the account was closed by checks dated December 23, 1913, amounting to some \$6,319 (Record 821). The record further shows that on December 23, 1913 (Record 357) the Bank of Topeka was garnished by Rosenwald & Weil on account of claim against the Badders Clothing Company and that several other suits and garnishments were pending. After that time the defendant kept no checking account in the bank until the \$7,000 was disbursed by putting up \$5,000 of it as guaranty to the surety on the Clothing Company's appeal bond in bankruptcy and in the other ways heretofore detailed, the funds were kept in a safety deposit box in the Bank of Topeka (Record 670).

There is no evidence aside from what has been stated tending to show or bearing remotely upon the charge in the indictment that the defendant devised a scheme or artifice for the purpose of defrauding the persons named in the indictment of property by means of false pretenses and promises and no evidence showing or tending to show an intention on the part of the defendant to use the mail in connection with any such scheme or artifice, even if it was devised as charged. But the evidence was directed to the proposition that the defendant had not paid his debts or had evaded or attempted to evade the payments of some of them, and preferring others.

## BRIEF AND ARGUMENT.

**Section 215 of the Criminal Code as applied to the indictment, trial and conviction of the defendant, is unconstitutional and void.**

By demurrers (Record 28) motions in arrest of judgment, (Record 125) and requests for instructions (Record . . . .) the defendant challenged the constitutionality of Section 215 of the Criminal Code. These challenges were overruled (Record 735) and these rulings are assigned as error.

For convenience of argument our contentions may be stated as follows:

(A) Section 215 of the criminal code as applied to the facts set up in the indictment in this case, is not within the grant to Congress of power, "to establish post officers and post roads," and, "to make all laws which shall be necessary and proper for carrying into execution," such power.

(B) Interpreted so as to make each letter placed in the mails for the purpose of executing a scheme or artifice as alleged in the indictment herein a separate offense, the section is repugnant to the constitutional provision that: "Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted."

(C) As applied to the facts alleged in the indictment the section is repugnant to the first amendment to the Constitution, providing that; "Congress shall make no law \* \* \* abridging the freedom of speech."

Section 215 of the Criminal Code (Act of March 4, 1909, which took effect January 1, 1910) so far as applicable to this case, reads as follows:

"Whoever, having devised any scheme or artifice to defraud, or for obtaining money or property by means of false or fraudulent pretenses, representations, or promises \* \* \* shall, for the purpose of executing such scheme or artifice, or attempting so to do, place, or cause to be placed, any letter \* \* \* in any post office \* \* \* to be sent or de-

livered by the post office establishment of the United States \* \* \* shall be fined not more than one thousand dollars, or imprisoned not more than five years or both "

The law as it existed prior to the enactment of Section 215 is contained in Section 5480, R. S. As originally enacted Section 5480 reads as follows:

"If any person having devised or intending to devise any scheme or artifice to defraud \* \* \* to be effected by either opening or intending to open correspondence or communication with any other person, whether resident within or outside of the United States, by means of the post office establishment of the United States, or by inciting such other person to open communication with the person so devising, or intending, shall in and for executing such scheme or artifice, or attempting so to do, place any letter or packet in any post office of the United States, or take or receive any therefrom, such person so misusing the post office establishment, shall be punished by a fine of not more than five hundred dollars, or by imprisonment for not more than eighteen months, or by both such punishments. The indictment, information, or complaint may severally charge offenses to the number of three, when committed within the same six calendar months; but the court thereupon shall give a single sentence, and shall proportion the punishment especially to the degree in which the post office establishment enters as an instrument into such fraudulent scheme and device."

By the Act of March 2, 1889, Section 5480 was amended to read as follows:

"If any person having devised or intending to devise any scheme or artifice to defraud, to be effected by either opening or intending to open correspondence or communication with any person, whether resident within or outside of the United States, by means of the post office establishment of the United States, or by inciting such other person or any person to open communication with the person so devising or intending, shall, in and for executing such scheme or artifice, or attempting so to do, place or cause to be placed, any letter, packet, writing, circular, pamphlet or advertisement in any postoffice, branch postoffice, or street or hotel letter box of the United States, to be sent or delivered by the said postoffice establishment, or shall take or receive any such therefrom, such person so misusing the post office establishment shall, upon conviction, be punishable by a fine of not more than five hundred dollars and

by imprisonment for not more than eighteen months, or by both such punishments, at the discretion of the court. The indictment, information or complaint may severally charge offenses to the number of three when committed within the same six calendar months; but the court thereupon shall give a single sentence, and shall proportion the punishment especially to the degree in which the abuse of the postoffice establishment enters as an instrument into such fraudulent scheme and device."

The first notable change made is in the addition of a new offense, *i. e.*, placing a letter in the mail for the purpose of executing "any scheme or artifice \* \* \* for obtaining money or property by means of false or fraudulent pretenses, representations, or promises." Former acts were directed against "any scheme or artifice to defraud." At common law indictable fraud was confined to cheating by means which affected the public generally, calculated to defraud numbers, to deceive the people in general "by any deceitful practice or token, short or felony" (12 Am. & Eng. Ency. Law 794), and cases cited. Until the reign of George II it was not an indictable offense to obtain property or money by means of false pretenses or representations which merely affected the person defrauded; and Ch. 24 of the Acts of that reign created the new offense which the courts then and now distinguish from frauds indictable at common law. The intention of Congress to adopt this distinction is shown by inserting after the words: "any scheme or artifice to defraud," appearing in former statutes, the additional words above quoted.

As the defendant was convicted of the alleged offense of having placed letters in a postoffice for the purpose of executing a scheme or artifice for obtaining property by means of false and fraudulent pretenses and promises, our argument is confined to the power of Congress to enact a statute declaring that the mere act of mailing a letter for the purpose of executing a scheme or artifice for obtaining property by means of false and fraudulent pretenses and promises, shall constitute an offense against the United States; where the act does not make an intent to use the mail as a means for so obtaining the property a necessary ingredient of the crime. All former acts were directed against schemes or artifices to be effected by means of correspondence conducted by mail, the overt act consisting of placing a letter or packet in a postoffice "in and for executing such scheme." The present

act is directed against schemes or artifices regardless of the means by which they are to be effected, and the offense is complete when a letter or packet is placed in the post office "for the purpose of executing the scheme or artifice." This change in the law is manifested by omitting from the new statute the words: "to be effected by either opening or intending to open correspondence or communication with any other person, whether resident within or outside of the United States, by means of the post office establishment of the United States, or by inciting such other person to open correspondence with the person so devising or intending." And also by omitting the words: "the court \* \* \* shall proportion the punishment especially to the degree in which the abuse of the post office establishment enters as an instrument into such fraudulent scheme and device." An essential ingredient of an offense under the law as it stood before Section 215 was enacted was an intent that, the postoffice establishment should be used as an instrumentality—a means—for accomplishing the fraudulent design. Under the present Act the offense is completed by placing in the mail a letter whose contents are thought by the accused to be conducive to the success of his fraudulent purpose. In other words, the mere offer for transportation by the post office establishment of a letter containing or relating to, or supplementing a false pretense, representation or promise by one who has conceived a fraudulent scheme or artifice to obtain money or property by means of false pretenses, representations or promises, constitutes an offense under Section 215. The act goes further. Even if the contents of the letter, standing alone, could not affect the success of the design, yet, if by extrinsic evidence it can be shown that the letter supplements or fortifies false representations, pretenses or promises, otherwise conveyed, or to be conveyed, the offense is complete. More than this. The contents of a letter placed in the mail for transportation to another by a person innocent of any intent to obtain property by false pretenses or promises, is not an offense under the act, but a letter in the same words placed in the mail by a person having the intent to obtain property by false pretenses or promises is an offense under the act. It is not the intent to make the post office establishment an instrument for the accomplishment of the criminal design, but the intent to execute such design, which makes the deposit of the letter a criminal offense against the United States under the present statute. We submit that the omission of

the ingredient, found in former acts, of an intent to use the postal facilities as a means of executing the fraudulent purpose is fatal to the validity of the act. The power of Congress to enact legislation relative to the use of the mail was last before this court in the civil case of *Public Clearing House v. Coyne*, 194 U. S. 497, which was a bill in equity brought against the postmaster at Chicago to restrain him from seizing and detaining the plaintiff's mail, stamping it fraudulent and returning it to the senders. A master to whom the issues were referred reported that the complainant was engaged in a business which was, in effect, a lottery, and as such was not entitled to the use of the mails. The trial court denied an injunction and dismissed the bill. The Public Clearing House appealed, claiming that Section 3929, R. S. is unconstitutional because it authorized the Postmaster General "upon evidence satisfactory to him" to interdict and prohibit the plaintiff receiving any mail, destroy its business, and its property, and property rights and to subject its papers and sealed packets to unreasonable search and seizure. In general the opinion by Mr. Justice Brown follows *Ex Parte Jackson*, 96 U. S. 727, and *In re Rapier*, 143 U. S. 110, but goes a step further than either of those cases. In the opinion it is said (p. 507):

"While it may be assumed for the purpose of this case, that Congress would have no right to extend to one the benefit of the postal service, and deny it to another person in the same class, and standing in the same relation to the government, it does not follow that under its power to classify mailable matter, applying different rates of postage to different articles, and prohibiting some altogether, it may not also classify the recipients of such matter, and forbid the delivery of letters to such persons and corporations as in its judgment are making use of the mails for the dissemination among its citizens of information of a character calculated to debauch the public morality."

These remarks were unnecessary to the court's decision as the master found the defendant's business really was a lottery, and, if we are to understand them as deciding that Congress may forbid the transportation and delivery by mail of information contained in letters or writings of a character, apparent by inspection, calculated to debauch the public morality, this latest exposition of the court's views is consistent with its previous decisions; but if we are to understand that the court decided that under the grant of



power to establish post offices and post roads Congress is authorized to classify citizens according to their moral conceptions, and forbid the use of the mails to those who develop an intention to commit offenses against state laws, regardless of the character of the writings they place in or receive from the mail, the above is the first case in which this court has so ruled. Prior to this decision similar acts of Congress had been sustained on the ground that under this grant Congress could determine what articles should be allowed in the mails and what excluded. The classifications approved were of things. Now the question is whether the field of operation of the power may be enlarged so as to include the classification of persons according to their moral conceptions. Former cases held that Congress could determine the moral character of the *articles* offered for mailing. Now it must be claimed to support this act that the moral conception of the *person* who places the letter in a post office is the test. Congress in this act has apparently followed the intimation in Public Clearing House case and classified persons sending or receiving mail by forbidding the use of the mail to persons who devise the schemes or artifices enumerated in the section. This we contend is not within the powers conferred by the grant. Congress of course cannot punish the devising of such schemes or artifices and, we suppose, cannot punish the mere act of depositing an unobjectionable letter in a post office. It assumes by this Act however, to punish the composite result of devising one of the enumerated schemes or artifices and of mailing a letter the contents of which are intended in some degree (however slight) to carry out the scheme of artifice. The case at bar concretely illustrates the exercise of the asserted power of thus classifying persons using the mails. The defendant, engaged in the retail clothing business, is charged in one of the counts of the indictment with writing and mailing the following letter (Record 10):

"December 1, 1913.

Lipps Bros.,  
622 Broadway,  
New York City.

Gentlemen:

Please send us at once by express thirty blue serge suits your No. 6883 in following sizes: (here follow sizes)

Yours very truly,

The Badders Company

By, George S. Badders."

This letter is, of course, a mere order for goods to be shipped to the Badders Company. In and of itself it has no tendency toward immorality; and an Act of Congress undertaking to punish a person merely for depositing such a letter in a post office cannot be justified by any decision thus far announced by this court. The defendant's conviction therefore must be sustained, if at all, by proof of other facts than the writing and mailing of such a letter. Proof was addressed to the point that prior to the mailing of this order for goods the defendant had devised—conceived—a scheme or artifice for obtaining goods by means of false pretenses and promises and wrote the letter with an intent to carry out this design. It is not charged in the indictment nor otherwise claimed by the government that he mailed the letter with intent to accomplish this design by means of the postal facilities; nor that the defendant intended that the post office establishment should be a means or instrumentality for obtaining the goods from the person to whom he wrote the letters. No doubt there are cases where an unlawful intent is sufficient to make an act criminal which except for such intent would be innocent, but it must be an intent which has some direct relation to the act which it colors and taints. The intent to do murder by poison is wholly disassociated from the act of depositing the poisonous substance in the mail. In such case it would be an intent to do murder by means of poison, not an intent to do murder by means of the post office establishment, or by means of the mail carrier who delivered the packet containing the poison, or by means of the envelope, box or wrapper in which it was mailed. A design to accomplish the seduction of a woman by lascivious writings, cannot aggravate and is not in the least material to the offense of placing such writing in the mail. A purpose to destroy property by means of an explosive is wholly disconnected from the act of depositing the explosive in the mail. The intent is to destroy property by means of an explosive; not by the means of transportation adopted by the sender.

The difference between an intent to effect a scheme by means of the post office establishment, and depositing a letter in the post office for the purpose of executing the scheme is apparent. In the one case the intent is to open correspondence through the mail and by means of such correspondence as a convenient or necessary means advance the scheme, in effect an intent to accomplish the scheme or artifice *by means* of the mails. In the other case, the intent is to execute the scheme itself by any means whatsoever, not

to use the mails to accomplish it. In the one case, the means by which the scheme is intended to be effected is the use of a government facility as a convenient or necessary instrumentality. In the other case the use of the government facility is a mere incident. The so-called lottery statutes and similar acts have been sustained by this court as an exercise of power granted to Congress to regulate the business of the post office establishment, by prescribing what should be received and what should be excluded from the mails; that in the exercise of this power it might exclude articles on account of their intrinsic illegality or impropriety such as counterfeit money, lottery tickets, gambling devices, obscene literature and the like, a mere inspection of which showed that they were obnoxious to the public morals or propriety; and also might exclude poisonous or explosive substances or the like, as dangerous to the postal service itself. Granting that Congress has power to exclude such articles and to punish any person who places such articles in the mail is very far from granting that Congress has power to punish an intent on the part of the person who deposits such substances or writings, to commit murder, seduction or arson by means of the substances or writings and attempting to sustain the power by the claim that placing such substance in the mail with intent to do murder, seduction or arson, constituted an offense against the post office establishment. It never has been supposed, so far as we know, that under the grant of power to establish post offices, Congress has power to classify citizens with sole reference to their moral conceptions and forbid the use of the postal facilities to those whose intentions toward others do not meet the approval of Congress. It is true that Section 215 does not in terms forbid any person who has devised one of the enumerated schemes or artifices from using the post office establishment but in effect it does so, and therefore, is an attempt to classify users of the postal facilities according to their moral conceptions, without the slightest regard to the intrinsic nature of the letter or other articles which they may deposit in the mail. For all the purposes of this case the defendant is punished for having deposited a letter with an intent to commit an offense cognizable only in the courts of the state, which letter would have been unobjectionable if he had not had such intent.

If it be said that the present act, in the respect that it classifies individuals rather than the articles which they deposit in the mail, does not differ from previous statutes which have been sustained by

this court; the answer is that there is a fundamental difference between a statute which punishes the placing of a letter or packet in the mail with intent to use the post office establishment as an instrumentality for committing an offense and a statute which attempts to punish the placing of a letter in the post office with intent to commit an offense against the laws of the state without any design or purpose to use the post office establishment as a means of committing such offense. And it is this difference which characterizes and condemns the present statute. Indeed these considerations are so potent that those who assert the existence of the power to enact the previous statutes concerning abuses of the post office establishment were driven to declare that the gist of the offense under such statutes was the intent to use the post office as a means of carrying out the obnoxious scheme or artifice although devising such scheme or artifice was a necessary ingredient; and it was upon this ground that former statutes were sustained by this court. But this argument cannot avail in defense of an act which studiously omits any reference to using the post office as a means to effect the criminal or immoral object conceived or devised by the person who places the letter in the mail?

A recognized rule of interpretation permits us to consider the several grants of power contained in the section in which is found the authority to establish post offices and post roads, to aid in discovering the extent of the power given by this particular grant. Among these are, the power to regulate commerce among the several states, to regulate the value of money; to fix the standard of weights and measures; to provide for the punishment of counterfeiting; and, to make all laws which shall be necessary and proper for carrying into execution the foregoing powers.

With reference to the power to regulate commerce among the states it is settled by repeated decisions of this court that it has no limitation except such as are found in the Constitution itself; and it cannot be doubted that this is equally true of the other powers granted by this section. It also has been said that all of the powers possessed by the states to regulate commerce among them is embraced in the grant to Congress of the power to regulate commerce among the several states; and that no residue of such power remains in the several states. No doubt this is true also of the power to establish post offices and post roads. The reservation to the states and people respectively, in the Constitution of all power not expressly granted to Congress is con-

tained in language which is just as broad as the language which contains the several grants. Whatever is not within the terms of the grant or which is not necessary and proper for carrying the granted power into execution, is, of course, reserved to the several states. The words of the grant of power "to establish post offices and post roads" are not apt to convey the idea that power is conferred upon Congress to classify individuals according to their moral conceptions who may desire to use post offices and post roads. This is particularly true when such classification is founded upon a supposed intention of individuals to offend against the criminal laws of the states in which they reside or do business. While the inaptitude of the words of the grant is not of itself conclusive against the existence of the power yet it is a very persuasive circumstance which should be considered that an ordinary person reading such words, would not suppose that the power to establish post offices included the power to classify persons who might use the post office according to their moral conceptions. Article 1 of the Amendments to the Constitution provides that: "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof, or abridging the freedom of speech or of the press." This would seem to prohibit Congress from classifying individuals according to their religious beliefs, or according to their writings or speech. Yet, if the power to establish post offices and post roads includes the power to classify individuals desiring to use postal facilities according to their moral conceptions and forbid those who entertain a purpose to commit an offense against the laws of one of the states, no reason is perceived why, the whole being within the uncontrolled discretion of Congress, it may not exercise the power by classifying the persons according to their respective religious beliefs or according to their methods of writing or speaking; but no one would suppose that Congress had such power by virtue of this grant.

In what is known as the "Lottery Case" 188 U. S. 321, 375, this court upheld the validity of Section 1 of the Act of March 2, 1895, entitled: "An Act for the suppression of the lottery traffic through national and interstate commerce and the postal service, subject to the jurisdiction of the laws of the United States." The case arose upon an indictment charging one Champion and others with having conspired to commit the offense described in this act, the overt act being the delivery to an ex-

press company of a package containing lottery tickets to be transported from Texas to California. On behalf of the accused it was argued that the act was unconstitutional because the suppression of the lottery business is not an exercise of any power committed to Congress by the Constitution, because the sending of lottery tickets does not constitute a transaction of interstate commerce; and because the power to regulate lotteries and permit or prohibit the sale of lottery tickets is exclusively within the powers reserved to the states." On the part of the government it was contended that since Congress could exclude obscene literature from foreign commerce it could exclude it from interstate commerce, and if it could exclude such literature why could it not exclude lottery tickets? That Congress had power to exclude spirituous liquors from Indian commerce and why not from interstate commerce also; and if it could exclude spirituous liquors why not lottery tickets? That a reasonable and proper prohibition of an immoral and unsafe trade through the channels of interstate commerce is a police power which belongs to the Republic as the sovereign authority over interstate trade; that such police power must exist somewhere; that if it did not exist in the states it must exist in the Federal Government. A majority of the court held that lottery tickets are articles of commerce but confined the court's judgment sustaining the validity of the Act to the immediate case before it, as follows (p. 363):

"The whole subject is too important, and the questions suggested by its consideration are too difficult of solution, to justify any attempt to lay down a rule for determining in advance the validity of other statutes that may be enacted under the commerce clause. We decide nothing more in the present case than that lottery tickets are subjects of traffic among those who choose to sell or buy them; that the carriage of such tickets by independent carriers from one state to another is therefore interstate commerce; that under its power to regulate commerce among the several states, Congress, subject to the limitations imposed by the Constitution or the exercise of the powers granted—has plenary authority over such commerce, and may prohibit the carriage of such tickets from state to state, and that legislation to that end and of that character, is not inconsistent with any limitation or restriction imposed upon the exercise of the powers granted to Congress."

These views did not secure the assent of four of the justices. A dissenting opinion was delivered by Chief Justice Fuller, concurred in by Mr. Justice Brewer, Mr. Justice Shiras, and Mr. Justice Peckham. The dissenting judges could not agree that lottery tickets are articles of commerce, and said that the act in question was intended to suppress lotteries, and that Congress had no power to do this, as the suppression of lotteries as a harmful and dangerous business falls within the power reserved to the several states and commonly called their police power. It was said:

"Congress may indeed make all laws necessary and proper for carrying the powers granted to it into execution and doubtless the prohibiting the carrying of lottery matter would be necessary and proper to the execution of the power to suppress lotteries but that power belongs to the states and not Congress. To hold that Congress has general police power would be to hold that it may accomplish objects not entrusted to the general government within the operation of the tenth amendment."

The Chief Justice speaking for the dissenting judges pointed out that the second section of Article Four of the Constitution, that; "The citizens of each state shall be entitled to all privileges and immunities of the citizens of the several states," is in effect a restatement of the Fourth Article of Confederation which provides that: "The free inhabitants of each of these states shall be entitled to all the privileges and immunities of free citizens in the other states; and the people of each state shall have free ingress and egress to and from any other state, and shall enjoy all the privileges of trade and commerce," and that Mr. Justice Miller in the Slaughter House Cases, 16 Wall. 36, declared that there can be but little question that the purpose of the Fourth Article of the Confederation and of the language quoted from the second section of Article Four of the Constitution, is the same and that the privileges and immunities mentioned are the same in each, and said:

"It is thus seen that the right of passage of persons and property from one state to another cannot be prohibited by Congress. But that does not challenge the legislative power of a sovereign nation to exclude foreign persons or commodities or placing an embargo perhaps not permanent upon foreign ships or manufactures. The power to prohibit the transportation of diseased animals and infected goods

over railroads or on steamboats is an entirely different thing, for they would be in themselves injurious to the transaction of interstate commerce, and moreover are essentially commercial in their nature. And the exclusion of diseased persons rests on a different ground, *for nobody would pretend that persons could be kept off the trains because they were going from one state to another to engage in the lottery business.* However enticing the business may be, we do not understand how these pieces of paper themselves can communicate bad principles of conduct." (Italics ours).

We have examined and quoted from this case at some length because we think it has a direct bearing upon the asserted claim that the grant of power to Congress to establish post offices and post roads found in the same section with the grant of power to regulate commerce among the several states, includes the power to prohibit mailing an unobjectionable letter because the writer intended its contents to aid him in obtaining goods by false pretenses, and without intent to make use of the post office. From the opinion, taking into account the views of the dissenting judges, we cannot escape the conclusion that this court would not uphold an Act of Congress, asserted to be an exercise of the power to regulate commerce among the several states, which attempted to punish a person for going upon an interstate common carrier with intent to commit an offense against the laws of one of the states. We think this court would deny the power of Congress to classify the persons entitled to go upon common interstate carriers or to send goods by interstate carriage according to their moral conceptions or their intentions to commit offenses. We think this court would deny the power of Congress to enact that goods otherwise unobjectionable should not be transported from one state to another if the person who placed them upon an interstate carrier intended by means of such goods to defraud another. We think this court would deny to Congress the power to punish any person who went upon an interstate carrier for the purpose of executing a previously devised scheme to obtain property by means of false or fraudulent pretenses or promises. We think this court would deny, in short, the power of Congress to punish a person who went upon an interstate carrier for the purpose of executing a previously devised scheme to commit any offense cognizable under the laws of any of the states. While



there is no express language in the Constitution limiting the power of Congress to regulate commerce among the several states and denying the right to exercise such power by the enactment of statutes classifying persons engaged in interstate commerce according to their moral conceptions or intentions any more than there are express limitations in the Constitution upon the right of Congress to exercise the power to classify persons desiring to use the post office establishment according to their moral conceptions, or according to their intent to commit an offense such as obtaining property from any persons by means of false pretenses or promises, contained in a letter deposited in the mail, yet such statutes are bad because they are not necessary or proper to carry the powers granted into execution. The limitation upon Congress which prevents it from exercising such powers is found in the Tenth Amendment which reserves to the people and states respectively, all of the powers not expressly delegated to Congress. This limitation is found also in the fact that the classification of persons according to their moral conceptions forbidding persons whose moral conceptions are obnoxious to the views of Congress from using the post office establishment is utterly foreign to the power granted by the provision of Section 8 to establish post offices and post roads. According to the argument of those who assert the existence of such power this grant means that Congress is given power to establish a moral standard for persons who desire to use a government facility; and forbid such use to those who do not measure up to such standard. We undertake to say that if it had been proposed to the constitutional convention to invest Congress with such powers, the proposal would not have secured a single affirmative vote. Certainly so important a power would not have been granted in the phrase "to establish post offices and post roads."

What we have said will suffice to show that we cannot agree that this grant of power justifies the enactment of such statutes as Section 215 of the Criminal Code. We are not required to argue that a statute which prohibits the use of the post office establishment as a means for committing an offense against the laws of the states would or would not be valid. What we contend is, that by the changes for the first time introduced by Section 215, Congress has disclosed a purpose, fatal to the validity of the act, to punish persons for attempting to obtain property or money by means of false pretenses. And since it is not within the power of Congress to create such an offense the act is void.

By exercising the asserted power under the grant to establish Post Offices and Post Roads, and to regulate commerce among the several states, it is easy to see how Congress could give jurisdiction to the United States Courts to punish offenses which hitherto have been thought cognizable only in the courts of the several states. The intercourse of the people by correspondence and travel has grown to be an essential part of their daily life. Those who framed the constitution considered that some power was reserved to the states to punish such offenses as we have described. This power resides in the states; and we contend that under the guise of exercising a power to establish Post Offices and Post Roads and to regulate commerce among the several states, Congress cannot exercise any of these reserved powers. If, as frequently said, it is essential to conviction in this class of cases that a person must have devised a scheme or artifice to commit an offense against state laws before he can be convicted of an offense against the Post Office regulations manifestly one ingredient of the alleged crime is wholly beyond the power conferred upon Congress by this grant. This ingredient of the crime is wholly within the power reserved to the several states. Cases readily may arise which will bring into irreconcilable conflict the powers claimed for Congress in these respects, and the powers admittedly reserved to the states. If a person accused of having devised a scheme or artifice for obtaining property by false pretenses should be tried in a state court and acquitted would the judgment of acquittal be a bar to his prosecution in the federal court for having mailed a letter for the purpose of executing a scheme or artifice to commit the very offense of which he had been acquitted by the judgment of the state court?

Notwithstanding the view expressed in many decisions of the federal courts that the offense under section 215 of the Criminal Code consists in mailing a letter for the purpose of executing a scheme or artifice, the public, as well as trial judges, juries and trial lawyers very well know that in such cases the defendant is put upon trial for attempting to perpetrate a fraud, and that the use of the Post Office Establishment is a mere jurisdictional incident. Indeed, it is common knowledge that in this class of cases proof of the placing of letters in the mail is treated almost as a perfunctory part of the proceeding. It has become so that having established the devising of the scheme or artifice, almost anything is accepted as proof that the Post Office Establishment has been used for the purpose of executing such scheme or artifice.

The record in the present case discloses a conspicuous illustration of the disregard of the usual rules of evidence in criminal cases, and of the procedure as to the sufficiency of proof upon what is in theory the only element of the offense within federal cognizance. In the first count in the present indictment it is charged that the offense was committed by mailing a letter to Spero, Michael & Son. The proof failed as to this count and the defendant was found not guilty.

In the second count the offense charged is the mailing of a copy of the letter set out in the first count, addressed to Spero, Michael & Son, to Cohen & Lang of New York. On this copy and below the letter itself appears the words:

"Gentlemen: Above for your information.  
The Badders Co.  
G. S. B."

The Government called the witness Boyd (Record 470) to prove that this copy was the act of the defendant. The witness was asked:

"I now hand you Exhibit No. 72 (the letter in question) and ask you to state if that *bears the initials* of Mr. Badders?"

The witness answered:

"I think it does."

This is all of the evidence introduced by the Government to support the charge that the defendant mailed or caused to be mailed this letter to Cohen & Lang so far as identifying the letter as his act. Neither this witness nor any other witness was asked, or testified whether the defendant wrote the initials which appear as stated above. Neither this witness nor any other witness gave any testimony proving or tending to prove that the defendant ever saw or ever heard of the copy of the letter addressed to Spero, Michael & Son, yet the defendant was convicted on this count of having mailed this letter written to Spero, Michael & Son to Cohen & Lang. Of course, the witness thought the initials "G. S. B." which appeared on the paper were the initials of George S. Badders the defendant, but what he knew or thought as to who put those initials upon the paper was not even inquired about.

An envelope containing this letter was produced (Exhibit 89), (Record 824). It bore an address: "Cohen & Lang, New York," and a printed return card of the Badders Company, and was postmarked "Topeka, Kansas."

A witness testified that this envelope containing the letter was received through the mail. The Government made no attempt to show that the defendant had any knowledge, whatever, of the fact that a copy of a letter, apparently written by him to Spero, Michael & Son, had been placed in an envelope and addressed and mailed to Cohen & Lang, beyond proving that the witness Boyd thought the initials "G. S. B." were the defendant's initials.

In the same perfunctory way the Government attempted to establish the essential, dominant facts, the so-called indispensable pre-requisites to the federal jurisdiction as to the letters set up in the other counts of the indictment, and that they were mailed "for the purpose of executing" the alleged scheme or artifice. For example the witness Kroll (Record 522) stated that he received the letter set up in the fourth count from an elevator man, and that it had a postmark. This is absolutely all of the testimony upon which is predicated the conviction of the defendant of having written and mailed at Topeka, Kansas, within the jurisdiction of the court the letter, "for the purpose of executing" the alleged scheme or artifice.

As to all of the letters, except the one referred to in the second count, the indictment charged in express terms that they had been placed in envelopes properly stamped and addressed. Nothing in the indictment indicates any reason for the omission of copies of these envelopes, yet witnesses were permitted to testify that the envelopes were lost and secondary evidence of what was stated upon the envelopes was permitted.

With reference to the letter set out in Count 9, the witness Griffith (Record 549) testified that he had no independent recollection of the envelope or postmark, or whether the envelope had any postage stamps on it or not. The trial court stated that the fact that the letter was received from a letter carrier is sufficient to justify the court in admitting it. No proof was offered or made as to where any of these letters were mailed except the introduction of the envelope containing the Topeka postmark as to the copy of the letter set up in Count 2.

With reference to the letter in Count No. 11, the defendant was convicted of having written and mailed this letter upon the testimony of the witness Boyd that he thought the letter was signed by the defendant and the testimony of Myrtle Cohen (Record 554) that it was her custom to receive all mail matter addressed to the Hartman Trunk Company from a mail carrier. Asked if she had

any independent recollection of having received this letter from the mail carrier she answered "No" (Record 556).

It is needless to say that the defendant objected to the introduction in evidence of these letters and of this evidence as tending to show that they had been written by the defendant, had been mailed by him within the jurisdiction of the court, and were placed in the Post Office for the purpose of executing the scheme or artifice.

We have particularly mentioned the character of proof relied upon by the Government in this case as tending to show how cases of this character are considered. We are satisfied that no trial lawyer will contradict our statement that in all of these cases the defendant is really put upon trial for an offense which is cognizable only in the courts of the state, if regard is paid to that separation of powers intended by the Constitution.

**As interpreted by the trial court Section 215 encounters that provision of the Constitution which provides "that excessive bail shall not be required nor excessive fines imposed, nor cruel or unusual punishment inflicted."**

As stated before, the indictment under which the defendant was tried, contains twelve counts. The alleged scheme or artifice is set out in the first count, and by reference imported into each of the subsequent counts. It appears, therefore, that the defendant was charged with having committed twelve different offenses, each consisting of having devised the same scheme or artifice, and differing only in the fact that for the purpose of executing such scheme or artifice he placed twelve separate letters in the mail. The theory of the trial court was that the placing of each letter in the mail constituted a separate offense. We think this theory is erroneous. The charge in the first count as to the scheme or artifice is that the defendant devised a scheme or artifice to defraud twelve persons of their property by means of false pretenses and promises. The several counts charged that he placed in the mail the letter set out in the particular count "for the purpose of executing" the scheme or artifice set out in the first count. The defendant claims that where an indictment charges the devising of a single scheme or artifice to defraud definite persons of property by means of false pretenses, that he cannot be convicted of separate offenses under section 215 of the Criminal Code for having placed in the mail several different letters, all for the alleged purpose of executing the single scheme or artifice.

Section 215 of the Criminal Code provides that whoever having devised a scheme or artifice against which the act is directed, "shall, for the purpose of executing any such scheme or artifice," place a letter in a Post Office shall be punished by a fine not exceeding \$1,000, and by imprisonment not exceeding five years. The Government contends that the offense consists of a single isolated act, to-wit, placing a letter in the mail, and is repeated as often as the act is repeated. We contend that any number of letters placed in the mail for the purpose of executing a single continuous scheme or artifice for the purpose of obtaining property from the same persons constitutes but one offense.

Section 1024 of the Revised Statutes authorizes the joinder in one indictment of charges against a person for two or more acts, or transactions of the same class of crimes or offenses, and also for the consolidation of two or more indictments found in such cases. Under this section any number of indictments for the same class of crimes may be consolidated. If the defendant in this case had been charged in twelve separate indictments instead of in twelve separate counts of the same indictment, the same situation would have been presented as is now presented by a single indictment containing twelve counts. If he had been proceeded against under twelve indictments, each charging the devising of the scheme or artifice set out in the first count of the present indictment, and tried and acquitted under the first indictment, could he have been tried under the remaining indictments? It was determined by this court in the case of *Durland v. United States*, 161 U. S. 306, that the offense under Section 5480 consisted of three ingredients: One, the devising of a scheme or artifice, the second, an intent to use the post office establishment as a means or instrumentality for the purpose of effecting such scheme or artifice, and, third, the placing of a letter or packet in the mail "in and for executing" any such scheme or artifice.

Under Section 215 the offense consists of two ingredients: One, the devising of a scheme or artifice; and second, the placing of a letter in the mail "for the purpose of executing" such scheme or artifice. The defendant cannot be convicted under Section 215 for having devised a scheme or artifice described in that section. Nor can he be convicted for having placed a letter in the mail. The offense consists in having devised a scheme and artifice *and* placing a letter in the mail "for the purpose of executing" it. One ingredient is just as necessary to conviction as the other. Therefore,

if it be determined by the judgment of the court that a certain scheme or artifice was not devised, the defendant cannot be convicted, and if he is subsequently placed on trial for having placed a letter in the mail, whether the same letter set out in the previous indictment or another letter, "for the purpose of executing the same scheme or artifice under all the rules recognized by the principle of *res adjudicata* he would be entitled to plead in bar of the second suit the judgment in the first action that he had not devised the alleged scheme or artifice." We think, therefore, that it cannot be said that the offense under Section 215 of having devised a scheme or artifice for obtaining property by false pretenses, etc., from certain definite persons, consists of the isolated act of placing a letter in the mail and that the offense is repeated as often as a letter is placed in the mail. The same scheme or artifice must be on foot when the letter is placed in the mail, or the defendant cannot be convicted. If this is true then one of the essential ingredients of the offense is a continuing one.

That this is a proper interpretation we think is abundantly shown by the decisions of this court construing what we think is an analogous statute. It is settled by repeated decisions of this court that the offense described in Section 5440 (now Section 37 of the Criminal Code) is the conspiracy, but that the commission of an overt act for the purpose of effecting the object of the conspiracy is necessary to conviction. Section 37 of the Criminal Code provides:

"If two or more persons conspire either to commit any offense against the United States or to defraud the United States in any manner, or for any purpose, and one or more of such parties do any act to effect the object of the conspiracy, all the parties to such conspiracy shall be liable to a penalty of not more than \$10,000 or to imprisonment for not more than two years, or to both fine and imprisonment in the discretion of the court."

Stated in precisely equivalent words, the section denounces the devising of any scheme in which two or more persons join, to defraud the United States in any manner, for any purpose, provided they do *any* act to effect the object of the conspiracy.

Section 215 provides:

"Whoever having devised any scheme or artifice to defraud \* \* \* shall for the purpose of executing such

scheme or artifice place \* \* \* *any* letter \* \* \* in any Post Office \* \* \* shall be fined not more than \$1,000 or imprisonment not more than five years, or both."

It is settled by repeated decisions of this court that but one punishment can be imposed upon two or more persons who jointly devise a scheme to defraud the United States, however many overt acts they may do to effect their object. Section 215 differs in no material respect from Section 37 as to the matters we are now considering. Section 37 provides against doing *any* act to effect the object of the conspiracy. Section 215 provides against placing *any* letter in the post office "for the purpose of executing" the scheme. No reason is perceived why the interpretation of Section 37 that the word *any* does not convey the idea of isolated acts is not directly and conclusively applicable to Section 215. If two or more persons jointly devise a scheme to defraud the United States and place in the post office a thousand letters, each separately mailed and each written and mailed "to effect the object of the conspiracy" such persons can be punished for but one offense; but if one of such persons devises a scheme to defraud a private individual and to effect the object of his scheme places a thousand letters in the mail, according to the theory advanced by the government, such person could be punished for a thousand distinct offenses.

There must be a reason for these directly opposite interpretations of strictly analogous statutes. The reason advanced by those who attempt to sustain the validity of Acts of Congress undertaking to punish persons who devise schemes or artifices to commit offenses against state laws is because Congress has no power to punish the devising of schemes to commit offenses against state laws, therefore the offense under statutes of this kind consists in the misuse of the post office facilities.

They were driven to this argument by the necessity of upholding these acts. We submit that this argument, founded upon such a necessity, does not stand the test of reason. Those who advance it must be prepared to assert that Congress intended by Section 37 to authorize the punishment of those who conspire to defraud the United States and do any act to effect the object of the conspiracy, for each isolated overt act. As we have seen, this interpretation has not received the approval of this court, although the argument by which the validity of previous acts of Congress undertaking to pun-



ish those who devise schemes or artifices to commit offenses against state laws, and place a letter in the mail "for the purpose of executing" such scheme or artifice on the ground of necessity, apparently has been sustained.

In all previous acts Congress directed the courts to apportion the punishment to the degree in which the post office establishment was intended to be used as an instrumentality for carrying out the illegal scheme or artifice in previous acts, but a single sentence was to be pronounced for any three offenses committed during six months, and included in the same indictment. By these provisions found in all of the previous acts Congress manifested an intention to direct the courts to take into consideration the extent to which the post office establishment was used, or intended to be used in connection with the scheme or artifice. In Section 215 none of these directions appear. Apparently, Congress intended to punish those who devised a scheme or artifice declared to be illegal or fraudulent, without regard to the degree to which the post office establishment was used as an instrumentality for executing such scheme or artifice. In our opinion, the intention thus manifested controls the interpretation of the statute. If the degree to which the post office establishment was used, or intended to be used as an instrumentality for the accomplishment of the illegal scheme or artifice is immaterial, how can it be said that the offense consists of an isolated act and that the offense is repeated as often as the act is repeated? No doubt a person may be punished under this statute, if it is valid, for placing a single letter in the mail for the purpose of executing the illegal scheme or artifice, just as a conspirator may be punished for doing a single act to effect the object of the conspiracy; but granting this does not by any means admit that Congress intended that an additional offense was committed each time a letter was placed in the mail for the purpose of executing the same illegal scheme or artifice any more than it is to be supposed that Congress intended to punish as an additional offense the doing of more than one overt act to effect the object of a conspiracy to defraud the United States. Under former statutes, trial judges were expressly told to make the punishment proportionate to the extent of the use of the post office establishment by the accused in accomplishing his illegal purpose. Now, trial judges are authorized to punish the offender by a definite term of imprisonment and by a definite fine, without regard to the extent to which the post office establishment may have been

used or intended to be used. If it be argued that the intention of Congress was to increase the punishment so as to authorize the imprisonment of an offender against this statute for a period of five years, and a fine of One Thousand Dollars (\$1,000) for each letter he placed in the mail, or took from the mail, with a view to carrying out a single scheme or artifice prohibited by the act, then we think that Congress has provided for the imposition of excessive fines and for the infliction of cruel and unusual punishment.

We have already called the court's attention to the views expressed by the Circuit Court of Appeals of the Fifth Circuit in *Etheridge v. United States*, 186 Fed. 434, as to the object Congress had in view when such statutes were enacted. According to these views this object was to prevent the use of the mails for the purpose of presenting schemes and artifices by which the public might be defrauded. Congress must have known what is within common knowledge that a single mail might bring to the person who had devised some such scheme or artifice hundreds of letters. Is it possible that Congress intended that taking each one of these letters from the post office would make the person liable to imprisonment for five years and a fine of One Thousand (\$1,000) Dollars? We think that Congress intended to give the courts authority to inflict a severe punishment upon those who use the post office establishment for the purpose of executing fraudulent schemes and artifices, but did not intend to authorize the infliction of punishment of imprisonment far beyond natural human life, and of fines almost beyond calculation. The case of this defendant shows the extent to which the statute goes if it be interpreted as contended for by the government. The indictment contains twelve counts in each of which the defendant is charged with having mailed a letter for the purpose of executing the single scheme or artifice alleged in the first count. He was convicted on seven of the counts and sentenced to imprisonment for five years on each count—the sentences to run concurrently and to pay a fine of \$1,000 on each count, making a fine of \$7,000 in all. In the course of the trial the government introduced and claims to have proved the writing and mailing of some forty letters. According to the government's theory the mailing of each one of these letters was for the purpose of executing the alleged scheme or artifice. No reason is perceived why the government could not have presented forty counts in this indictment instead of twelve, and if the defendant had been convicted on all of them

it is asserted the court was authorized to direct his imprisonment for two hundred years, and that he pay a fine of Forty Thousand (\$40,000) Dollars, and all of this as a result of isolated overt acts all for the purpose of executing a single scheme or artifice.

The sentence in the present case is more than twice as great a term in the penitentiary for mailing a single letter as could have been imposed under Section 37 of the Criminal Code for committing any number of overt acts in furtherance of a scheme and conspiracy to defraud the United States. In the aggregate it was in number of years longer than would have been imposed under any law of the State of Kansas relating to the obtaining of money or property by means of false pretenses and representations.

As said by Mr. Justice Field in his dissenting opinion in the case of *O'Neil v. Vermont*, 144 U. S. 337, 341:

"The sentence was one which in its severity considering the offense of which he was convicted may justly be termed both unusual and cruel."

And speaking of the intention expressed in the eighth amendment to the Constitution he said:

"The inhibition is directed not only against punishments of the character mentioned, but against all punishments which by their excessive length or severity are greatly disproportioned to the offenses charged. The whole inhibition is against that which is excessive either in the bail required, or fine imposed, or punishment inflicted. Fifty-four years' confinement at hard labor away from one's home and relatives, and thereby prevented from giving assistance to them or receiving comfort from them, is a punishment at the severity of which, considering the offenses, it is hard to believe that any man of right feeling and heart can refrain from shuddering. It is no matter that by cumulative offenses, for each of which imprisonment may be lawfully imposed for a short time, the period prescribed by the sentence was reached, the punishment was greatly beyond anything required by any humane law for the offenses. The State may, indeed, make the drinking of one drop of liquor an offense to be punished by imprisonment, but it would be an unheard of cruelty if it should count the drops in a single glass and make thereby a thousand offenses, and thus extend the punishment for drinking the single glass of liquor to an imprisonment of almost indefinite duration. \* \* \*

We are persuaded that if it had been stated in Congress that by Section 215 of the Criminal Code in an ordinary case of using the mails for the purpose of executing a single scheme or artifice, an accused person might be imprisoned for a period far beyond his natural life and so fined as to take away all that he possessed and leave him and his family without means, that the proposition would not have received a single affirmative vote. Taking into consideration the omission from the present statute of the directions found in previous acts that trial judges should take into account the extent to which the post office establishment was used or intended to be used as an instrumentality for carrying into effect the illegal scheme or artifice, and having in view the natural sentiments of humanity, together with the constitutional prohibition against cruel and unusual punishment, and excessive fines, we believe this court will conclude that it was not the intention of Congress that Section 215 of the Criminal Code should be differently interpreted from Section 37 of the Criminal Code in respect of overt acts committed under the first mentioned section, and that Congress intended by increasing the punishment to authorize the courts to punish offenders under this act by a small or a large fine, and by a short or a long term of imprisonment, namely, by a fine of anything up to \$1,000 and by imprisonment of any duration not exceeding five years.

If the court should reach this conclusion then it is manifest that but one offense is charged in the present indictment; that the government has split up a single cause of action into twelve parts. That the verdict of "not guilty" as to the first count of the indictment is a complete bar to further prosecution of the defendant, and that since he was pronounced not guilty as to the first count he should also be declared not guilty as to the remaining counts, and be discharged.

**Where the accused is held under a federal indictment which does not substantially state an offense against the laws of the United States he is deprived of his constitutional right to be informed of the charge against him.**

Separate general demurrers were interposed to each count of the indictment (Record 28). The ground of each demurrer is that the indictment does not state facts sufficient to constitute an offense against the laws of the United States. These demurrers

were overruled (Record 50), and these rulings are assigned as error (Record 130).

We think these rulings involve the construction and application of the Constitution, for the reason that if the indictment does not substantially state an offense against the United States, it does not meet the requirements of the Sixth Amendment, and the defendant is deprived of his liberty in violation of his constitutional rights. *Stewart v. U. S.*, 119 Fed. 89 (C. C. A. 8th C.); *U. S. v. Cruikshank*, 92 U. S. 542.

**The statement of facts in that part of the indictment attempting to charge a scheme or artifice is insufficient.**

In this indictment the pleader has not seen fit to adopt the language of the statute. He attempts to set out a scheme or artifice to defraud Spero, Michael & Son and other firms and corporations named, and still other firms and persons to the grand jurors unknown, of property by means of false pretenses and promises. Section 215 makes a distinction between schemes or artifices "to defraud" and schemes or artifices "for obtaining money or property by means of false or fraudulent pretenses, representations or promises." We lay aside for the present a consideration of this method of pleading the second offense under this section, and confine our attention to the general description of the offense attempted to be charged in the first count, of mailing a letter to Spero, Michael & Son for the purpose of executing a scheme or artifice devised by the accused for defrauding the persons named, and "other persons and firms unknown to the grand jury," or property by means of false pretenses and promises. We narrow the inquiry by pointing out that, since the pleader set out in the indictment the names and descriptions of particular persons, firms and corporations, whom it is alleged the defendant devised a scheme to defraud of property by means of fraudulent pretenses and promises, adding that he devised such scheme to defraud many and various other persons and firms to the grand jurors unknown, of their property by such means, and, since the Badders Clothing Company, mentioned in the indictment, and manifestly known to the grand jury is not stated to be one of the corporations so to be defrauded of property, it is clear that the grand jury does not charge the offense of mailing this letter for the purpose of executing a scheme or artifice to defraud the Badders Clothing Company of property by such means. (*Miller v. U. S.*, 133 Fed. 337.)

As a necessary foundation to sustain the charge by this par-

ticular indictment, a scheme or artifice to defraud the persons named of property by means of false or fraudulent pretenses and promises must be stated. (*U. S. v. Hess*, 124 U. S. 483.) This cannot be done by repeating the language of the statute. It must be such a statement of facts and circumstances as will inform both the accused and the court of "all such particulars as are essential to constitute the scheme or artifice" the accused is charged generally with intending to execute when mailing the letter set out in the several counts. (*U. S. v. Hess*, 124 U. S. 483.) An indictment under this section in charging the scheme or artifice must state the species of scheme; it must descend to particulars, and, for this facts are to be stated, not conclusions of law; and these facts must be set forth in the indictment with *reasonable particularity* of time, place and circumstance. (*U. S. v. Hess*, *supra*; *Cruikshank v. U. S.*, 92 U. S. 542; *U. S. v. Simmons*, 96 U. S. 360; *U. S. v. Carll*, 105 U. S. 611.) Such particulars are matters of substance and not of form. (See cases above cited.) And in determining the sufficiency of the statement in the indictment of the facts and circumstances claimed to constitute the scheme or artifice, all doubts must be resolved in favor of the innocence of the accused.

In *Nafzer v. U. S.*, 200 Fed. 294, 502, the Circuit Court of Appeals, 8th Circuit, said:

"It should be kept in mind that the elementary and fundamental proposition with reference to a demurrer to an indictment is that a question as to its sufficiency must be considered upon the sole theory that the defendant is presumably innocent."

The same court in *Müller v. U. S.*, 133 Fed. 337, 341, said:

"Every man is presumed to be innocent until his guilt is established. When one is indicted for a serious offense, the presumption is that he is not guilty, and that he is ignorant of the supposed facts upon which the charge against him is founded. He is unable to secure and present the evidence in his defense—indeed he is deprived of reasonable opportunity to defend—unless the indictment clearly discloses the facts upon which the charge of the commission of the offense is based. It must set forth the facts which the pleader claims constitute the alleged transgression, so distinctly as to advise the accused of the charge which he has to meet, so fully as to give him a fair opportunity to prepare his defense, so

particularly as to enable him to avail himself of a conviction or acquittal in defense of another prosecution for the same crime, and so clearly that the court upon an examination of the indictment, may be able to determine whether or not, under the law, the facts there stated are sufficient to support a conviction. *U. S. v. Hess*, 124 U. S. 483; *U. S. v. Post*, 113 Fed. 852. The use of the post office establishment of the United States to execute a scheme or artifice to defraud, the intention to use it in this way as a part of the scheme or artifice, the scheme or artifice to defraud itself, and the intention of the defendant to defraud, are essential elements of the offense described in Section 5480 of the Revised Statutes; and *allegations of fact* which plainly show the existence of these elements are indispensable to a valid indictment."

In the often cited case of *U. S. v. Hess*, 124 U. S. 483, it is said:

"Undoubtedly the language of the statute may be used in the general description of the offense, but it must be accompanied with such statement of the facts and circumstances as will inform the accused of the specific offense, coming under the general description, with which he is charged. \*  
\* \* Such particulars are matters of substance and not of form."

In *Martin v. U. S.*, 168 Fed. 198, 205, the Circuit Court of Appeals, 8th Circuit, speaking by Judge Sanborn, said:

"There can be no fraud where there is no endeavor or intent to injure or alter any right or interest of anyone, and where no right or interest of anyone is in fact injured or altered. One who does any act whereby he neither intends nor attempts to injure the right or interest of anyone, and whereby he does not in fact injure or alter the right or interest of anyone, cannot do that act fraudulently.

When the words of the statute do not 'fully, directly and expressly, without any uncertainty or ambiguity, set forth all the elements necessary to constitute an offense intended to be punished' an indictment in the words of the statute is insufficient. The crime must be charged with precision and certainty, and every ingredient of which it is composed must be accurately and clearly alleged. To this end facts must be stated not conclusions of law alone. The averment that an act, innocent in itself, but criminal if fraudulently done, was done 'fraudulently' or with intent to defraud, is but a bald conclusion of law and is futile. A crime is made up of acts and intent, and these must be set forth in the indictment with reasonable particularity of time, place and circumstance. This



indictment as well as the proof under it, is fatally defective because it sets forth no facts or acts which indicate any intent or attempt of the defendant to injure or alter the rights or interests of anyone."

Chief Justice Holt said:

"An act that appears to be innocent cannot be made a crime by adverbs of aggravation."

In *U. S. v. Watkins*, 3, Cranch C. C. 441, it is said:

"An averment that an act was done to commit a fraud is equivalent to an averment that the act was done fraudulently. No epithets, no averment of fraudulent intent can supply the place of an averment of facts from which the legal inference of fraud can be drawn."

In *U. S. v. Post*, 113 Fed. 852, 854, 855, referred to (C. C. A. 8th Circuit), in *Müller v. U. S.*, 133 Fed. 337, it is said with reference to an indictment under Section 5480:

"The well established principle of criminal pleading which requires direct, positive and affirmative allegations of every point necessary to be proven is too well established to require extended consideration. Nothing in a criminal case can be charged by implication, intendment or recital, but every fact necessary to constitute a crime must be directly and affirmatively alleged \* \* \* (page 855). The use of the word fraudulent is not alone a sufficient allegation of a fraudulent intent. The circumstances and declared intention must show an act to be such.

There was no pretense in the alleged advertisement or correspondence that the money received was not to be converted to the use of the defendant; therefore such conversion would not of itself be fraudulent. It was to be sent for that purpose, and other conditions must determine the integrity of such act."

At common law indictable frauds were confined to cheating by means which affected the public generally, that is scheme or artifice calculated to defraud numbers, to deceive the people in general "by any deceitful practice or token, short of felony." (12 Am. & Eng. Ency. Law, 794 and cases cited.) It was not until the reign of George II, that it became an indictable offense to obtain property by means of other false or fraudulent pretenses or representations. The statute of George II, Ch. 24, created this as new offense, a felony and this offense has been recognized by



statute in practically all the states and undeniably is recognized by Congress in amending the former acts. The second offense described in Section 215 of devising a scheme for obtaining property by means of false or fraudulent pretenses or representations is, therefore, distinct from the first offense of devising a scheme to defraud, i. e., a scheme calculated to defraud numbers, to deceive the people generally, "by any deceitful practice short of felony." This indictment attempts to charge a scheme or artifice devised by the accused to commit the offense of obtaining property by means of false and fraudulent pretenses and promises, and should set out facts from which the court can determine that if the accused had attained his purpose that offense would have been committed—together, of course, with allegations showing that he placed a letter in the mail for the purpose of executing his design. In this respect Section 215 should be interpreted in the light of the cases construing Section 5440 R. S. (now Section 37 of the Criminal Code). Section 37 is directed against two or more persons who conspire (devise) to defraud the United States or to commit an offense against the United States. It is settled law that an indictment under Section 37 must state facts showing that if the object of the conspirators should be attained the United States would be defrauded, or an offense against the United States would be committed; together, of course, with an allegation of a conspiracy to do the things which would accomplish the fraud or commit the offense and an overt act to effect the object of the conspiracy. (*Miller v. U. S.*, 133 Fed. 337, 341, C. C. A. 8th Cir.) Therefore this indictment should state facts from which the court can determine that if the devised purpose was attained the offense of obtaining property by means of false or fraudulent pretenses or promises would be committed; together with allegations showing that the accused devised a scheme or artifice to commit that offense, and, placed a letter in the mail for the purpose of executing it.

The essential allegations of an indictment for the offense of obtaining property by means of false and fraudulent pretenses and promises, are:

- (1) The time and place of procuring the property;
- (2) The knowledge of the accused as to the falsity of the statement;
- (3) The intent to defraud, which must be distinctly averred by affirmative allegation, and not merely by way of inference or argument;
- (4) The pretenses or promises alleged to be false must set

out in such terms that the defendant may know what he is called upon to answer and the court determine whether the crime has been committed; (5) The names of the parties defrauded, or a reason for their omission; (6) An allegation that the pretense or promise was relied upon and that the owner of the property was influenced thereby to part with his property; (7) A description of the property alleged to have been obtained; (8) Where money has been obtained it should be described; (9) The ownership of the property; (10) That the accused obtained the property; (11) Allegations showing the falsity of the pretenses and promises when made.

It is manifest that in charging a scheme or artifice to commit this offense there cannot be the same certainty of averment necessary in charging the completed offense; but the allegations must be sufficient to show that the accused "devised a scheme or artifice" to do the things essential to constitute the offense. Thus, facts should be alleged showing that the accused devised a *scheme or artifice* at a certain time and place to make certain representations and promises to certain persons either known to the grand jury and therefore identified by name, or unknown and their names omitted for that reason (*Larkin v. U. S.*, 107 Fed. 697, C. C. A., 7th Circuit); that he intended that such representations should be false; that he intended that the persons to whom he made such representations and promises should believe them, and be induced by them to part with certain property which should be described or some reason given for the omission; that he intended to obtain the property from the persons named by means of such representations and promises; that the accused intended that the pretenses and promises should be false when made; and that they would be false when made, and, finally that the accused intended to defraud these persons from whom he intended to obtain the described goods. Perhaps a good indictment can be drawn charging as an offense obtaining property from one person by means of false pretenses and promises made to such person for the purpose of defrauding a third person of the proceeds of such property, but if this charge is intended to be made it is clear that the indictment should allege facts showing the intent of the accused to defraud such third person; and also, facts from which the court can determine that the persons to whom the false representations and promises were to be made would be defrauded, if the scheme should be carried out as devised.

We contend that the present indictment does not meet these requirements. In substance the charge in the first count is that the defendant placed a letter addressed to Spero, Michael & Company, a corporation, in the postoffice at Topeka, Kansas, for the purpose of executing a scheme and artifice to procure the eastern wholesale merchants, named in the indictment and other persons to the grand jurors unknown, to sell and deliver goods to the Badders Clothing Company, a corporation of which the defendant was President and in practical control, *on its credit, to be paid for in the future* by falsely representing that the Clothing Company was a going concern with large assets, solvent, and able to pay for such goods; the defendant intending that after the goods were sold and delivered to the Clothing Company upon its credit to cause them to be sold otherwise than in the usual course of business and convert the money arising from such sale to his own use. The indictment charges the defendant knew that the Clothing Company was insolvent and unable to pay its creditors in full; and that he intended when ordering the goods that *he, the defendant, should not pay for them*. The indictment is silent as to the Clothing Company's intention in regard to paying for the goods; and, as stated, negatives any charge that the defendant's scheme was to defraud the Clothing Company. Nothing in the indictment charges that the defendant intended that the Clothing Company should not pay for the goods which he proposed to order on its credit. There are no allegations as to the defendant's financial responsibility, nor as to *his* intent with reference to accounting, or failing to account, to the Clothing Company for the proceeds of the sale of the goods. There is nothing in the indictment relative to any indebtedness of the Clothing Company to the defendant, nor any details as to creditors excepting the allegation that the defendant knew that the Clothing Company was insolvent and would not be able to pay its creditors in full. Nothing in the indictment negatives the financial ability of the Clothing Company to pay for the particular goods the defendant intended to order from the persons and corporations named. The indictment affirmatively shows that the defendant intended to and did advise the persons, firms and corporations from whom he intended to order goods on the credit of the Clothing Company that the goods were to be sold by the Company. The indictment states generally what representations the defendant intended to make, but does not say that he intended to make such representations to the persons named in the indictment. So far as anything to the con-

trary appears from the indictment the Clothing Company was engaged in a legitimate business—retail clothing—and, while unable to pay its creditors in full, was not without sufficient resources to pay for all of the goods the defendant intended to order on its credit from the persons and corporations named in the indictment.

The acid test of the sufficiency of an indictment for having devised a scheme or artifice to defraud persons of property by means of false and fraudulent representations and promises, is to suppose that the scheme or artifice as charged was carried into effect and then determine whether when so consummated the persons intended to be defrauded were actually defrauded of their property by such means. If the defendant in this case had represented and pretended generally false and fraudulent matters relative to the solvency and prospects of his corporation, but had not made such pretenses to the persons who shipped the goods upon the corporate credit it is too clear for argument that such persons could not have been defrauded of such property by such means. Moreover, if when such goods were received by the corporation of which he was president it had sold them and he had converted the proceeds of the sale to his own use, still this would not have accomplished a fraud on the persons who sent the goods to the corporation unless the corporation failed to pay for them. It is only necessary to suppose that these goods were paid for, notwithstanding the inability of the Badders Clothing Company to pay all of its creditors in full, to see that this scheme might have been carried out to the very letter and no fraud result; for there can be no fraud unless some one is deprived of something to which he is entitled. The mere fact that a defendant made false representations without saying that they were made to persons from whom he obtained goods would not sustain a conviction for the consummated crime, and therefore, in charging an offense of obtaining money of another by means of false representations it is necessary to charge that his scheme included the making of such false representations to the person from whom he intended to get the goods. We think it safely may be said that a charge of obtaining property by means of false representations, pretenses or promises cannot be sustained without alleging and proving an intent on the part of the defendant that the goods to be obtained were not to be paid for by the person upon whose credit they were bought. And this indictment wholly fails to allege such intent.

In this connection we call attention to the difference between the rule in civil cases in actions for damages for fraud and deceit and the rule in criminal cases. This distinction is pointed out in *People v. Flack*, 125 N. Y. 325, and consists principally in the fact that in a civil case it is sufficient to allege and prove the facts from which an intent to defraud may be presumed upon the theory that every man is conclusively presumed to intend the natural consequences of what he does. In that case the court referred with approval to the case of *People v. Baker*, 96 N. Y. 344, where it was held that a charge to a jury was erroneous which instructed them that:

"If you find that the defendant made the representations charged in the indictment, and that they were false, and that the defendant knew that they were false when he made them, then the law presumes the fraudulent intent."

The court of appeals also quoted with approval from *People v. Baker* as follows:

"The presumption that a person intends the ordinary consequences of his acts is, as applied to criminal cases, a rule to aid the jury in reaching the conclusion upon a question of fact and is not a presumption of law, and on trial on an indictment the intent is traversable and the defendant may testify as to his own intent."

It is manifest that if the defendant's intent is traversable, then it must appear upon the fact of the indictment that he had the dishonest intent that the person upon whose credit goods procured by misrepresentation should not pay for them.

The case of *People v. Flack*, *supra*, is quoted with approval by the Circuit Court of Appeals for the Eighth Circuit in *Fall v. U. S.*, 209 Fed. 547, where Circuit Judge Smith, delivering the opinion of the court, says:

"What is here announced is, that where the government relies upon circumstances to prove a conspiracy or the devising of a scheme to defraud, the case comes within the class where an intent different from the ordinary criminal intent must be shown."

Citing *People v. Flack*, 125 N. Y. 325; s. c. 11 L. R. A. 807; Wharton's Cr. Evidence 10th Ed. pp. 901, 906, 1685, 1698, 1771; *Potter v. U. S.*, 155 U. S. 438; *Rug v. U. S.*, 173 Fed. 912.

We therefore conclude that the indictment in this case is fatally defective in failing to set out facts sufficient to show the devising of a scheme to defraud the persons named in the indictment of property by means of false and fraudulent representations, pretenses and promises. It fails to charge an intent on the part of the defendant that the goods intended to be procured by misrepresentation were not to be paid for by the person upon whose credit they were sold. And it fails to charge that any misrepresentation, pretense or promise fraudulent or otherwise was intended to be made to the persons whom it is alleged the defendant intended to defraud of their property. It is fatally defective also in failing to charge any intention on the part of the defendant to take the proceeds of the sales of the goods ordered from the corporation of which he was President, without its consent. We conclude, therefore, that the defendant's demurrer to each count of the indictment should have been sustained, and the rulings of the trial court holding the indictment sufficient are erroneous.

**The indictment is fatally defective in that it does not state facts showing that the defendant devised any scheme or artifice.**

We have previously shown that by amending the former acts, Congress recognizes in Section 215 the settled distinction between fraud indictable at common law, and fraud accomplished by means of false or fraudulent pretenses and representations.

From the beginning of the legislation on this subject Congress has steadfastly adhered to the use of the words, "any scheme or artifice." The many acts upon this subject all contain these words. The offense, therefore, under Section 215 consists of devising a scheme or artifice and of placing a letter in the mail for the purpose of executing it, and unless the indictment contains facts showing the devising of a scheme or artifice it is fatally defective. When Congress amended the former act by adding the words found in Section 215: "For obtaining money or property by means of false or fraudulent pretenses, representations or promises," we think the intention was that the scheme or artifice for so obtaining property should consist of something more than making false pretenses or false representations or fraudulent promises.

In the present indictment there are no facts alleged from which the court can properly say that the defendant devised a

"scheme or artifice." Some remarks upon this subject made by the Circuit Court of Appeals of the Fifth Circuit in the case of *Etheridge v. U. S.*, 186 Fed. 434, with reference to Section 5480 R. S., are very appropriate to our discussion of this point:

*Etheridge v. U. S.*, 186 Fed. 434.

"The causes which led to the passage of the statute are well known. In a vast and growing country like ours, with its excellent mail facilities, unscrupulous persons were in the habit of utilizing the post office establishment for the purpose of effecting frauds and cheats upon the ignorant or unsuspecting in many seductive ways. The mails were flooded with letters and prospectuses concerning all manner of enterprises and ventures in which individuals were invited to participate. These projects in which persons were thus solicited to become interested seldom had any relation to the ordinary purchase and sale of commodities in the market, or the customary operations of trade and commerce. They were generally paraded in the garb of proposals and offers of some kind, which, under the circumstances set forth, were asserted to afford rare opportunities of gain, or the betterment in some way of conditions of mind, body, or estate of those who would act on the faith of the representations. While these projects and offers differed widely in scope and nature, the manner of their presentation through the mails was always marked by the same distinguishing characteristics, when they were conceived with a fraudulent intent. The 'scheme or artifice' was invariably bolstered by false pretenses, such as that the schemer or his associates were engaged in a particular calling or occupation, when in fact not so engaged; or that he was managing or promoting some existing or contemplated enterprise, when no such enterprise was in existence or contemplated, or, if actually undertaken, was materially different in conditions from that described; or that money or property intrusted to him in carrying out the scheme would be applied in a particular way, when he had the intent not to apply it at all, but to convert it to his own use; or that he was manufacturing or selling some particular kind of wares or goods when he was not so engaged, or, if he was making or selling them, intended to fill orders with worthless imitations, or not to fill them at all; or where he represented the wares and goods were valuable for particular purposes, when he knew, although he furnished them, they were worthless for such purpose, or that he possessed certain skill or attainments, the exertion of which would accomplish certain results for those employing him, when in fact, he possessed no



such skill or attainments, or, if he did, knew he could not effect what was promised, or did not intend to exert them as he promised; or other like circumstances to induce persons to negotiate with him through the mails that he might defraud them.

The misuse of the mails in these and kindred modes was the evil intended to be suppressed, and the examples we have given clearly point out the nature and scope of the conduct and misbehavior in the use of the mails which Congress had in mind when it spoke of 'any scheme or artifice to defraud.' The purpose of the statute was to prevent the circulation through the mails of cunning appeals to human passion for gain by untruthful and seductive embellishment of advantages of engaging in ventures, begetting confidence where it should not otherwise be bestowed, and luring persons of ordinary prudence and intelligence into fraudulent transactions and ventures, in which they would not otherwise be persuaded to embark. In short, as said in *Durland v. United States*, 161 U. S. 307, 16 Sup. Ct. 508, 40 L. Ed. 709, the statute meant to put an end to the use of the mails in tempting and cheating the ignorant and unsuspecting by the allurements 'of schemes glittering and attractive in form, though unreal and deceptive in fact.'

*United States v. Clark*, (D. C.) 121 Fed. 190; *Post v. United States*, 135 Fed. 1, 67 C. C. A. 679, 70 L. R. A. 980; *United States v. Mitchell*, 36 Fed. 492, 1 L. R. A. 796; *United States v. Owens*, (D. C.) 17 Fed. 72. Beyond this, the statute did not intend to go. When it spoke of 'scheme or artifice' it did not intend to cover, as we have endeavored to show, every method, however simple and crude, by which one man endeavors to defraud another, by proposals to buy his property, without intention to pay for it in any event. Such conduct, it is true, amounts to a cheat or fraud at the common law, and is immoral, and Congress has the right to punish it when the mails are used to effect such an end; but it has not expressed any intention to do so, except when such deceit and fraud are accomplished by methods which amount to 'a scheme or artifice to defraud.' The term, as used in the statute, includes much more than the sending of an order for goods with the intent not to pay for them, and thereby to defraud the seller. On the other hand, the fraudulent conduct which will bring the schemer within the statute is not confined to fraudulent misrepresentations as to past or existing facts, and the schemer may be guilty by the making of a fraudulent promise as to something to be done in the future, if the false promise be interwoven or connected with other intentional misrepresentations so cunningly blended and presented that they would or



dinarily mislead a man of common prudence. There must always be a 'scheme or artifice' of which the fraudulent promise forms a part to bring the offender within the statute. A mere fraudulent promise to be performed in the future, whereby one obtains goods from another, without paying for them, disconnected from anything in the transaction which amounts to a 'scheme or artifice' will not suffice to uphold a conviction for a violation of Section 5480 of the Revised Statutes as amended by the Act of March 2, 1889. Whether such conduct would come within the statute, as it appears greatly enlarged in Section 215 of the Penal Code (U. S. Comp. St. Supp. 1909, p. 1455), or whether the making of a fraudulent promise as a means of obtaining property, constitutes a 'scheme or artifice' within its meaning, is not involved on this writ of error, and no opposition is intended to be expressed as to it. The inclusion in the revision of the statute of the words 'for obtaining money or property by means of false and fraudulent pretenses, representations or promises,' not found in it before, after frequent amendments to broaden the scope of the legislation, is persuasive at least that Congress in its legislation prior to that amendment has not construed a mere false or fraudulent promise, standing alone, to constitute a 'scheme or artifice.' "

The charge is that the defendant made false statements relative to the present condition, and future prospects of the corporation upon whose credit he bought goods, with an intent on his part to convert the goods into money and convert the money to his own use. Certainly this does not change a scheme or artifice unless the making of such pretenses and promises in and of itself satisfies the requirement of the statute that the accused shall have devised a *scheme or artifice*.

We think Congress intended a distinction to be observed between having devised a *scheme or artifice* for obtaining property by means of false or fraudulent pretenses and *intending* so to obtain property. We think the words of the statute which we have referred to are not equivalent to: "Whoever *intending* to obtain property by means of false or fraudulent pretenses," etc., for there is a difference between *devising a scheme or artifice* for obtaining property by means of false pretenses and merely *intending* to so obtain property. Mailing a letter with intent to obtain property by means of false pretenses is not the same as mailing a letter for the purpose of executing a *scheme and artifice* for obtaining property by such means. Section 215 undertakes, among other things,

to punish a person who places in the mail a letter for the purpose of executing "any scheme or artifice" for selling counterfeit money. Does this language reach the case of any person who places a letter in the mail containing a mere offer to sell counterfeit money? Does it meet the case of a person who writes and mails a letter saying: "I have \$1,000 in counterfeit money which I will sell for \$50." (?)

Would the mailing of such a letter be an offense under a statute directed against the mailing of a letter for the purpose of executing a *scheme* or *artifice* for selling counterfeit money; and, if it would be an offense, what constitutes the scheme or artifice required by the language of the act? We think that a person could not be convicted of a violation of this act for mailing a letter merely saying:

"Send me ten suits of clothing by express. I am solvent and can and will pay for the clothes in thirty days,"

even though it be shown that at the time of writing and mailing such letter the writer intended to obtain the property by false pretenses and fraudulent promises and intended not to pay for it, and was insolvent and could not pay for it, and knew that his representations contained in the letter were false and that his promise was fraudulent.

That our interpretation of the indictment is correct is shown by the trial court's interpretation in this instruction to the jury stating the scheme and artifice as charged in the indictment (R. 746):

"The nature of the scheme or artifice to defraud set out in each count of the indictment is in substance, that the defendant George S. Badders would falsely and fraudulently represent and pretend to the persons, corporations and partnerships named in the indictment, and to others, that the Badders Clothing Company, of which he was president, was a going concern, with large assets, and solvent, and able to pay for all goods that might be ordered and purchased by it or ordered and purchased by the defendant as the president of the Badders Clothing Company. That he, the said defendant would order and purchase in the name of the Badders Clothing Company, large quantities of merchandise and dispose of the same for cash without paying for the same; that he designed and intended not to pay for the merchandise so ordered and purchased by him as aforesaid, but to obtain said merchandise, sell the same for cash and fraudulently convert said cash to his

own use for personal gain, and in that way and by the means above stated, cheat and defraud the persons, co-partnerships and corporations named in the indictment of the merchandise ordered and purchased of them by the defendant in the name of the Badders Clothing Company.

This, in brief, gentlemen, is the substance of the scheme alleged to have been advised by the defendant."

If the statute read: "Whoever intending to obtain money or property by means of false or fraudulent pretenses, representations, or promises, shall" etc., the above charge might be correct for the purpose of the present point. But it does not describe a "scheme or artifice." It merely describes a purpose to obtain property by means of false and fraudulent pretenses and promises.

In this connection we contend upon the authority of *United States v. Britton*, 108 U. S. 199, that allegations of what the accused did for the purpose of carrying out an alleged scheme or artifice cannot be resorted to in support of allegations attempting to charge a scheme or artifice.

In the present indictment the charge is:

"That on or about the date hereinbefore mentioned, and theretofore, George S. Badders planned, contrived and devised that he would and *did* represent and pretend," etc.

It is further charged that:

"To evade paying therefor, he would and did have pretended meetings of the Board of Directors of the said Badders Company, in which he had them vote, and they did vote for and declare a dividend of 25 per cent," etc.

It is further said:

"That he, the said George S. Badders, then and there, and at all the times herein mentioned, and at the various times he *ordered* the goods and merchandise from the various parties aforesaid, then and there unlawfully and feloniously designed and intended not to pay for the same," etc.,

and:

"The said George S. Badders then and there well knew that the pretenses, promises and statements *so made by him* as aforesaid, and *so used* by him were false and untrue."

Such allegations under the rule stated cannot be resorted to for the purpose of ascertaining what the scheme or artifice was. They merely charge the defendant with having made representa-

tions and promises which he knew when he made them, were untrue. No time is stated when these things were actually done; yet if, the alleged false representations and fraudulent promises were completely made and the goods received before he placed any of the letters in question in the mail, it cannot be said that they were placed in the mail for the purpose of executing a scheme or artifice (*Stewart v. United States*, 119 Fed. 89).

**The indictment is fatally defective because it does not charge an intent on the part of the defendant to use the post office establishment as a means to effect the alleged scheme or artifice.**

This indictment attempts to charge a scheme or artifice to commit an offense against the laws of the State of Kansas, to-wit, the offense of obtaining property by means of false pretenses and representations. Of course, the courts of the United States have no jurisdiction over such an offense, but where the commission of an offense is an ingredient of a crime against the United States, and Congress in designating the offense uses terms known to the common law, the courts of the United States resort to the common law for the proper definition of such terms. (*Pettybone v. U. S.*, 148 U. S. 197, 203.) Accordingly, we say that this indictment attempts to charge a scheme or artifice to commit the offense of obtaining property by means of false pretenses. The indictment does not in terms aver an intent on the part of the accused to use the post office establishment of the United States for the purpose of committing the offense against the state law. It does not charge that the scheme or artifice included a purpose to misuse the mail. For aught that appears in the indictment the defendant may have placed the letters in the mail without intent to make the post office establishment a means of consummating the offense which he designed to commit against the laws of the state.

In *Pettybone v. U. S.*, 148 U. S. 197, it was settled that an intent to commit an offense against the laws of a state does not imply an intent to commit an offense against the laws of the United States; and that where an intent to commit an offense against the United States is a necessary ingredient of the offense attempted to be charged in the indictment, that intent must be charged directly, and not inferentially, or by way of recital (p. 202).

This indictment does charge that the accused placed the letters in question in the mail "for the purpose of executing" the

scheme and artifice to defraud. We think this allegation does not sufficiently charge an intent to use the post office establishment as a means or instrumentality to commit the offense against the state law. If it does charge this intent, it does so inferentially and merely by way of recital. Under this statute, an intent to use the post office establishment as a means for consummating the scheme or *artifice* is essential to conviction of any offense against the United States.

If this indictment, in addition to the allegation that the accused placed the letters in the mail for the purpose of executing the alleged scheme or artifice, stated that he did so without intent to use the post office establishment as an instrumentality in carrying out his scheme or artifice, such additional allegation would not be inconsistent with what appears, and of course would render the indictment bad. The question presented is whether an intent to use the post office establishment as an instrumentality for carrying out the scheme or artifice is charged in the words of the statute, "for the purpose of executing such scheme or artifice," or whether such intent must be directly charged as an issuable fact. We interpret the general language of this indictment as a mere conclusion supposed to be supported by the previous allegations of facts showing what the alleged scheme or artifice was. We cannot resort to the letters, themselves, alleged to have been placed in the mail, to ascertain whether they were mailed for the purpose of executing the alleged scheme or artifice. We think facts should be stated from which the court may conclude as matter of law that the defendant intended, when he placed the letters in the mail, to use the post office establishment as a means for carrying out his illegal purpose.

As this indictment fails to directly charge an intent to use the post office establishment for the purpose of executing the alleged scheme or artifice we think it is fatally defective.

**The indictment is duplicitous in that it cannot be determined whether it charges the defendant with having devised a scheme or artifice to defraud, or a scheme or artifice for obtaining property by means of false or fraudulent pretenses, representations or promises.**

By assignment of error No. 7 (Record 131), the defendant complains that the trial judge overruled that part of his motion to quash, which alleges that the indictment is duplicitous.

We have heretofore shown that by the present statute, Congress makes a distinction between a scheme or artifice to defraud and a scheme or artifice for obtaining property by means of false or fraudulent pretenses. As we understand the rule, an indictment which does not clearly state the offense with which the defendant is charged where the statute makes a distinction between offenses, is duplicitous. It will be observed that the present indictment attempts to charge the defendant with having devised a scheme or artifice *to defraud* certain named persons *of property* by means of false pretenses and fraudulent promises. We think that this leaves the defendant in doubt as to whether he is to meet a charge of having devised a scheme or artifice to defraud, or is charged with having devised a scheme or artifice for obtaining property by means of false pretenses and fraudulent promises. In other words, this indictment fails to charge the offense directly, and leaves the defendant to determine from inference what he is to meet. Under the rule we think the indictment is duplicitous and that the motion to quash on that ground should have been sustained.

**Plaintiff in error is held to answer for an infamous crime without an indictment of a grand jury found and presented as required by law.**

The Fifth Amendment to the Constitution in providing that: "No person shall be held to answer for a capital or otherwise infamous crime unless on a presentment or indictment of a grand jury," intends not merely an indictment in form, but a valid indictment found and presented according to settled usage and established procedure. The plaintiff in error contends that the proceeding in his case does not meet these requirements. His contention is based upon the following facts: Before pleading the defendant challenged the indictment by a motion to quash (Record 37) one of the grounds of which was that no indictment had been lawfully found or presented. A hearing was had upon this motion and defendant's bill of exceptions (Record 51) shows that the regular district judge for the District of Kansas opened the April, 1914, term of the District Court on April 13, 1914; that on that day twenty-three persons summoned as grand jurors attended; that two of them were excused and the oaths provided by the Kansas statutes (Section 6651, 6652, G. S. 1909) were administered to the foreman and the others; that on April 15, 1914, the District Judge left the district to sit with other Federal Judges in the hearing of a

case in the District of Iowa returning on April 20, 1914; that the United States Marshal, during the absence of the judge, regularly opened and adjourned court each day; that during the regular judge's absence there was no United States judge within the district; that the grand jurors thus impaneled held daily sessions during the judge's absence, heard witnesses upon the question whether the defendant should be indicted and otherwise transacted grand jury business; that on April 22, 1914, while the District Court was in regular session with the regular district judge presiding the foreman handed the present indictment with others, to the Assistant United States Attorney who in turn handed it to the judge, who gave it to the Clerk, directing that it be filed. The Assistant United States Attorney testified that in the grand jury room the roll was called and all were present and all of them went into court and were present when the indictment was delivered to the Judge. No roll of the grand jury was called in the court; the grand jury was not polled as to the concurrence of any of them in finding the indictment; nor was any other proceeding had with reference to the presentation of the indictment except as above stated.

On these facts the defendant raised two questions: First, was it lawful for the grand jury to remain in session and receive testimony upon the question of indicting the defendant during the time of the absence of the District Judge in the above circumstances; and, secondly, was the indictment presented according to settled usage and established mode of procedure?

Section 12 of the Judicial Code provides that:

"If a judge of the district court is unable to attend at the commencement of any regular, adjourned or special term, or any time during such term, the court may be adjourned by the marshal or clerk, by virtue of a written order directed to him by the judge, to the next regular term or to any earlier day, as the order may direct."

It is clear, therefore, that the court was adjourned and not at recess during the absence of the presiding judge holding court in another district. We contend that in such circumstances there is no court organized for business and it is not within the power of a grand jury to hold sessions, examine witnesses and deliberate as though there was a court organized for business.

In *People v. Rotoli*, 115 New York Supp. 854, it was held that during the absence of the judge presiding at a trial term of court



and while he was engaged in his duties in other counties, leaving the grand jury in session that the court was not organized for business and the indictment found by the grand jury was invalid.

Whether the adjournment under Section 12 of the Judicial Code, *supra*, wholly dissolved the grand jury is unnecessary to decide. It must be presumed that the grand jury was influenced in their conclusion on this indictment by the testimony taken during the adjournment of the court. Our contention is that at such time this grand jury was not a lawfully existing body. Any other conclusion would make a grand jury separate and independent and in no manner accessory of the court. Once impanelled it might continue to exercise its functions indefinitely regardless of the adjournment of the court of which it is a part. If sessions of the grand jury held during the adjournment of the court and in the absence from the district of any district judge for a period of five days, are valid, no reason is perceived why sessions held during an adjournment of five months would not be equally valid. At its regular lawful sessions a grand jury possesses certain powers which it cannot be said to possess when not in lawful session. We submit that the question is fairly presented by the record directly involves the plaintiff in error's constitutional right; is of grave importance and has not been thus far decided by the court.

As to the second point, that the indictment was not publicly presented in open court as required by law, the only evidence of the fact that the grand jury attended is the testimony of the United States attorney that before the grand jury went into court the roll was called and all of them were present. Our contention is that the only lawful evidence of the presence of the grand jury in court is the public calling of the roll by the clerk of the court, each juror answering to his name. We think this is required by the practice as it was understood at the time the constitution was adopted. As said by the Circuit Court of Appeals of the Fourth Circuit in *Reinger v. U. S.*, 172 Fed. 646, 654:

"When the Constitution enumerated those guaranties intended for the security of personal rights, and among them that no person shall be held to answer for a capital or infamous crime unless on the presentment or indictment of the grand jury, it manifestly intended a valid indictment, found and presented according to those ancient rules and safeguards which the law and immemorial custom have provided for the conduct of grand juries. It did not mean a



mere form of indictment, but it meant a formal accusation of the offense charged, of which at least twelve of the grand jury were satisfied of the truth, and publicly returned into court, endorsed as a true bill. Until and unless it is so presented, it is no indictment. The fundamental prerequisite to the trial of the defendant for the offense charged against him was an indictment by the grand jury. Every text writer from Chitty and Blackstone down to Bishop and Joyce, is in agreement as to the manner in which indictments should be found. They all agree that, when the grand jury has acted upon the bills submitted to them, they come publicly into court, their names are called, and the foreman hands the indictment to the clerk. It is not without reason that this formality is required and that the grand jury should be present when the indictment is presented to the court; for, before a man can be held to answer for a capital or infamous offense, at least twelve of the grand jurors must agree to the finding of a true bill. If the grand jury is present when the presentment is made, their assent is conclusively presumed, unless something to the contrary appears. If they are not present, there can be no such presumption."

In the absence of evidence to the contrary perhaps this court should presume that the clerk called the roll; that each juror answered to his name, and, therefore was present and assented to their foreman's presentation of an indictment. But here the evidence is that the roll was not called; that nothing whatever was done to inform the court that the grand jury was present. How was the court to know they were present, unless they answered to their names upon roll call?

It was distinctly held in *State v. Cox*, 6 Ind. L. (N. C.) 445, that the grand jury must be in court when the indictment is returned. And to ascertain that they are present they ought always to be called by the clerk.

We distinguish the case of *Breese v. U. S.*, 226 U. S. 1, from the one at bar. There the objection was made after a plea of not guilty had been entered, and even then was not made at the first opportunity. The trial court also found "that more than twelve grand jurors voted to find the indictment a true bill." Neither of these conditions rule the present case. The objection in this case was made before any plea was entered and in conformity to the trial court's standing rule and nothing appears as to how many grand jurors voted to

find the indictment a true bill, unless the court may presume the concurrence of twelve from the fact that the indictment is endorsed, "a true bill" and properly signed. We think no such presumption follows from that fact. In *Frisbie v. U. S.*, 157 U. S. 160, 163, this court ruled that the fact that the grand jury returned the indictment into court is evidence of the approval of the requisite number of grand jurors, "and a formal endorsement (by the foreman: 'a true bill') loses its essential character." It seems to us, therefore, that it is not proper to found a presumption of performance of a mandatory, statutory requirement of the concurrence of twelve grand jurors upon an endorsement which is without essential character and which is not required by statute. Section 1021, R. S. means that unless an indictment is concurred in by twelve grand jurors it is no indictment. As the concurrence of such a number is a condition precedent to a valid indictment it seems to us that the silence of the record cannot be supplied by presumption but should be supplied by affirmative proof in all cases where the defendant seasonably attacks the indictment as not having been lawfully found and presented.

In the Breese case, *supra*, it is said that any irregularities in the presentation of the indictment are within Section 1025 R. S. We submit that this ruling was not necessary to a decision in that case. At all events, our present purpose is not to attack the indictment itself, either as to its form or endorsement. Our challenge is to the procedure. As we understand Section 1025 it has relation to matter of form of the indictment itself and not to the manner in which the indictment was found or presented. This point is so decided in the *Renigar* case, *supra*. Upon the authority of the numerous text writers as to the indispensable pre-requisites in the finding and presentation of a valid indictment, required by the rules established and recognized at the time the constitution was adopted, we most respectfully urge that a departure from this practice is in substance a departure from the constitutional provision which was adopted in view of such well known and settled formalities, which, in our opinion, were adopted with the constitutional security. We note that in the Breese case, *supra*, the court remarked that the reasons requiring the public presentation of the indictment: "If they ever were very strong, have disappeared, at least in part, and, that congress could dispense with the formality of the presentation of an indictment in open court."

This leads us to say that in our opinion it would not be within the constitutional power of Congress to impair that provision of the Constitution which provides that no person shall be held to answer for an infamous crime except upon the indictment of a grand jury. Certainly if it be conceded that the procedure well known and established at the time this constitutional provision was adopted became a part of the provision, no change of such procedure is within the power of Congress.

Upon the foregoing facts and for the reasons stated, we contend that the plaintiff in error is held to answer for an infamous crime without a lawful indictment found by a grand jury within the meaning of the Constitutional requirement.

**Having directed an officer of the court to produce material documentary evidence in his possession, necessary for the defense, the court erred in refusing defendant time and opportunity to supply secondary evidence of the contents of such documents when the officer failed to produce them, claiming that they had disappeared.**

On January 20, 1916, upon the application of the defendant, the court directed the receiver, appointed in the bankruptcy proceeding against the Clothing Company, to produce a lot of books, papers and correspondence in his possession and which he had been specially requested to preserve for the defendant's use. On January 23, 1916, the receiver attended the trial and stated (Record 178) as follows:

Questions by the United States Attorney:

"Q. I will ask you whether you were advised day before yesterday that the court desired you to bring, and that I desired you to bring all these papers and these boxes that you speak of, to Kansas City?

A. I was called to the telephone about 11 o'clock Thursday night by the Western Union and they repeated a telegram from you, advising that the court had made such order."

The receiver then stated that when he went to get the books, and papers, they were missing. He thought they had been stolen; that among other things, the boxes contained stock books of the Badders Clothing Company, showing the quantities of various articles in the stock, together with the original cost mark showing the prices paid for the merchandise to the various eastern dealers and manufacturers (Record 179); that with these stock books and

other books which should have been available the amount of merchandise could have been ascertained; that at the request of defendant's attorney (Record 182), that these books and papers be preserved, they had been packed in boxes and taken to his private office in Topeka, Kansas, where he supposed they were, until the morning following the night he received notice of the court's order to produce them at Kansas City, and that he was unable to find them (Record 178). Immediately upon learning that the books and papers would not be produced by the receiver, defendant applied for time to search for them and if they could not be found, for time and opportunity to supply evidence of the purchases made by the Clothing Company, and of business correspondence relating to its business, by taking the testimony of the eastern firms and companies with which the Clothing Company had dealt. This application is in writing and appears at p. 90, *et seq.*, of the Record.

The trial court denied this application, and the defendant was compelled to go to trial without this evidence. The colloquy between the trial judge and counsel for the defendant, and the court's ruling upon the application, appear on p. 199, *et seq.*, of the Record.

We think it scarcely needs argument to show that this ruling was erroneous and of course highly prejudicial. The defendant had a constitutional right to compulsory process to produce this evidence and exercised it by having the court direct the receiver to bring the boxes containing the evidence, which the defendant had asked the receiver to preserve, to the place of the trial. The defendant had been diligent in bringing the matter to the court's attention, and to the attention of the United States Attorney (Record 199). He had asked for time to examine these papers, giving sufficient reasons why he had not done so before. His company was contesting the validity of the order appointing the receiver, and declined to recognize the receiver's right of possession. Hearing his statement of what the boxes and papers contained, the court directed the receiver, in whose custody the boxes and papers had been lodged, to produce them at the place of trial for defendant's use, and overruled his application for time to examine them. The failure of the court's officer to produce the required documents was in no manner attributable to the defendant. It was not his fault, but the fault of the receiver in failing to safely keep documents belonging to his trust. The application shows that the papers and books were material. The stock books particularly were important because, as stated by the receiver, they contained infor-

mation from which could be ascertained the amount of goods on hand at any time.

The defendant could not leave the court while his trial was in progress; and it plainly appeared that to enable him to produce the evidence contained in these books and papers by any sort of disinterested testimony, it was indispensable that he should have time and opportunity to take the depositions of persons living at a great distance at their regular places of business, where their records as to their dealings with the Badders Clothing Company would be available. The nature of the case was such that defendant justly might expect to be discredited both by his manifest interest and by the failure of corroborative documents, and the testimony of dealers and manufacturers with whom his company had dealt. In such circumstances the ruling of the trial court amounts to an exclusion in advance of these books and papers constituting the business records and correspondence of the Badders Clothing Company. It necessarily deprived the defendant of any means, whatever, of procuring testimony of great probative value, and vital to his case. In substance, it amounted to a denial of the process of the court to compel the production of these papers.

The record presents a case of a defendant who had procured compulsory process directed to a court official whose duty required him to safely keep certain books, papers and documents, indispensably necessary to the defendant's case, and who, without warning, is confronted with a statement by the court's officer that he cannot find the papers which it was his duty safely to keep and produce upon the order of the court and which at the opening of the trial he testified were in his possession and would be produced (Record 153). In such circumstances we think a defendant has an absolute right to process to get such necessary evidence; and that if it be shown that copies of such papers can be obtained, if a reasonable time and reasonable opportunity are afforded, it is manifest and prejudicial error to deny a request for such time and opportunity to supply the loss of papers which the defendant had every reason to suppose would be produced and available to him upon his trial. It is no answer to suggest that defendant could have had subpoenas *duces tecum* directed to the various wholesale merchants and manufacturers with whom his company had dealt, as he could not, from the very nature of his situation, particularly describe the papers that were needed and in many instances could not tell

until after taking the testimony of the persons in charge of the records of the firms with whom he had dealt, just what papers he could get.

We earnestly request this court to examine the record disclosing the repeated efforts made by this defendant to procure this corroborative testimony, and particularly to observe that he was finally put in an embarrassing situation, before the jury, by the cross examination of the prosecuting attorney, during which the defendant repeatedly was asked to explain the contents of the so-called ledger of the Badders Clothing Company, and again and again stated he could do so if the missing papers had been produced.

We are entirely satisfied that such an examination will result in the court reaching the conclusion that the defendant was deprived of the opportunity secured to him by law to present his defense; and that in this particular, at least, he has not had a fair trial.

### **The Defendant Was Not Arraigned as Required by Law.**

The Record shows, as follows (Record 87) :

"Journal Entry. Wednesday, January 20, 1915. No. 4160. The United States vs. George S. Badders. Now come the parties hereto, the Government appearing by Fred Robertson, United States Attorney and Francis M. Brady, Assistant United States Attorney; defendant, George S. Badders, appearing in person and by J. H. Harkless and D. R. Hite, his attorneys. Thereupon comes on for hearing defendant's motion for a continuance and the court having heard the evidence introduced both for and against said motion, the arguments of counsel, and being well advised in the premises finds said motion for a continuance should be, and the same hereby is overruled; to which order and ruling of the court defendant excepts. Thereupon the court proceeds to empanel a jury to try the issues in this case, and the hour of adjournment having arrived, the jurors who have qualified are admonished of their duties by the court and further proceedings in the case are postponed until tomorrow."

The Record further shows (Record 88) :

"Journal Entry of Jan. 21, 1915. No. 4160. United States vs. Geo. S. Badders. Now come the parties hereto same as on yesterday, the Government appearing by Fred Robertson, U. S. Attorney, and Francis M. Brady, Assistant U. S. Attorney; said defendant Geo. S. Badders, being present in his own proper person and by D. R. Hite, and James H.

Harkless, his attorneys. Thereupon said defendant is arraigned upon the indictment herein, said indictment being then and there read to him but said defendant declines to plead thereto. Thereupon it is by the court ordered that a plea of not guilty be and the same is hereby entered for and on behalf of said defendant. Thereupon the empaneling of a jury herein is proceeded with and to try the issues submitted to them comes the following jury to-wit: (Here follows names of twelve persons); twelve good and lawful men of the body of the First Division of the District of Kansas, who being duly empaneled and sworn to well and truly try the issues submitted to them and a true verdict give according to the law and the evidence, the trial of said case is proceeded with."

The defendant contends that this record does not meet the requirements laid down by this court in the case of *Crain v. United States*, 162 U. S. 625. True, in that case the record was silent as to whether or not the defendant was arraigned and plead to the indictment; but this court quoting with approval from a number of cases on the necessity of a formal arraignment, determined that a proper arraignment is necessary to the jurisdiction of the court. This record shows that the defendant was not arraigned until after the court undertook to exercise its jurisdiction by proceeding to empanel a jury to try the issues. In other words, the record shows that on January 20, 1915, before the defendant was arraigned, and before he had plead to the indictment or been asked to plead to it that "Thereupon the court proceeds to empanel a jury to try the issues in this case" for the record shows that on the following day, January 21, 1915, he was arraigned and the empaneling of the jury proceeded with.

This court quotes with approval from the case of *State v. Ulger Chenier*, 32 La. Ann. 103, 104, where the accused,

"After the trial commenced, was, by order of court, arraigned and his plea made. The trial then proceeded under the direction of the court. The Supreme Court of Louisiana said: 'We cannot sanction such a departure from ancient land marks in criminal procedure. The prisoner must be arraigned and must plead to the indictment before the case can be set down for trial, or tried.'"

The court also quotes from 1 Bishop's Cr. Pro. Sec. 733, to the effect that the arraignment must be before the jury are sworn, and that afterwards the plea comes too late.



This court said (p. 643), after citing other cases:

"We think it may be stated to be the prevailing rule in this country, and in England, at least in cases of felony that a plea to the indictment is necessary before the trial can be properly commenced, and that unless this fact appears affirmatively from the record the judgment cannot be sustained."

We think that the court had no jurisdiction to proceed with the empaneling of a jury until after the defendant had been arraigned and had either plead to the indictment or refused to plead. As the record affirmatively shows that the trial was commenced by proceeding with the empaneling of the jury on January 20th, 1915, and that the defendant was not arraigned, or called upon to plead until after the jury was partially empaneled, it appears that an indispensable prerequisite to the proceeding against him was wanting, and therefore that he has not had a trial as required by law and his conviction cannot stand.

If it be argued that the arraignment and plea could be made the second day of the trial, we ask why any arraignment and plea is necessary until the third day, or until the end of the trial, or at all?

**The court's refusal to give the instructions requested by the defendant constitutes material and prejudicial error.**

#### I.

The court's full charge will be found in the record beginning on page 743. With reference to intent the court charged (Record 747):

"The essence of the existence of a scheme to defraud depends upon the intent with which the scheme was gotten up. If the intention was honest and upright and the scheme gotten up in good faith, and with the intention of carrying out the promises made therein, then there was no fraud; but if the defendant got up the scheme with the intention to cheat and defraud the persons named in the indictment, or any one of them, then it was a fraudulent scheme within the meaning of the statute under which he is indicted.

In determining what the intent of the defendant was you must take all the facts and circumstances in this case, including the fact, if it be a fact, of the good character of the defendant in the case, consider them in the light of each other, with a view of getting at the actual truth of what the intent of the defendant was. You do not ordinarily get at what



the intention of a person is by declarations of his own. The intent is generally established by facts and circumstances. From these facts and circumstances, and of all the evidence in the case, you will determine what the intent was on the part of this defendant. The object and purpose of the statute under which this indictment was drawn was to protect the public against intentional efforts to despoil, and to prevent the post office establishment of the United States from being used to carry fraudulent schemes into effect. It makes but little difference what the specific representations were if they were false and fraudulent and made with the intention of carrying out a scheme, the object and purpose of which was to defraud."

The defendant requested the court to charge the jury with reference to certain specific issues which were before the jury, and this the court declined to do. Among others, the court was requested to charge the jury (p. 35 of this Brief), that if they found from the evidence that the money taken by the defendant from the sale and disposition of his stock of goods was paid, or caused to be paid to his creditors with the intent on his part to apply the same in good faith to the liquidation of his debts and *bona fide* expenses, that no presumption could arise therefrom, or because of such acts and conducts that he had devised to scheme or artifice to defraud, and that if he did so pay the same in good faith that the jury should take such fact into consideration in passing upon the question as to whether he intended at the times charges in the indictment to devise a scheme or artifice to defraud his creditors as therein charged.

The record discloses that the uncontradicted evidence shows that the defendant had expended some \$35,000 and more, in the discharge of debts due from the Clothing Company as well as from himself. This request would have pointed out to the jury that the fact that the defendant did pay some of his debts should be taken into consideration in passing upon the question of his intent. We do not deny the correctness of the propositions of law stated in the court's general charge on this subject but we contend that the charge upon such propositions is too abstract and that it was too briefly stated by the trial judge. We contend that the bare statement of abstract principles of law does not satisfy the rule that litigants are entitled to specific instructions upon matters put in issue by the testimony when such instructions are requested. Counsel for the defendant therefore, fearing that the jury might not be sufficiently advised

as to the rules of law applicable to the material facts which were in issue, requested the foregoing and other similar instructions.

In this connection we refer to the decision of the Circuit Court of Appeals for the Fifth Circuit in *Texas Railway Company v. Rhodes*, 71 Fed. 145, where it is said:

"If the refused charges recite correct propositions and rules of law, and if the matters therein contained, or the substance thereof, are not covered by the charge given, we see no reason why they should not have been given. We think it announces correct propositions of law and carries with it a warrantable illustration of the principles laid down in the judge's charge, and the effect of it would have been to aid the jury in applying the rules of law, sharply, to the material issues of fact upon which either party may rely."

Under the rule thus clearly announced the foregoing instruction should have been given.

## II.

It is shown by the uncontradicted evidence, and indeed was admitted by the defendant that certain merchandise was shipped out of the store in Topeka to St. Joseph and Kansas City, Missouri, in December, but was returned intact before the receiver appointed in the bankruptcy proceeding took charge. In view of this evidence the defendant requested the trial court to charge the jury (p. 35 of this Brief), that even though they should find that these boxes of goods were taken from the store and stored elsewhere, and were returned and replaced, and constituted a part of the goods turned over to the receiver, that so far as the creditors were concerned the defendant had a right to do this. That it constituted no offense in and of itself, and that the defendant could not be found guilty of any crime or offense in the transaction itself; that such evidence was competent only and solely as bearing upon the question as to whether the defendant intended to devise a scheme or artifice to defraud the creditors as and at the time charged in the indictment, and that in considering the question the jury might take into consideration that the goods were returned and that the defendant charged them to his personal account on the corporate books.

In another place of this brief we call attention to the testimony justifying the above request, that it was to the effect that these

goods were shipped out upon the advice of the sales manager, Mr. Stern, because they were high class clothing and the sale was of such a character that they could not properly be sold at Topeka. When they were shipped out proper tickets were furnished to the accounting department by the defendant and they were charged to his account (Record 285). Upon their return the charge was cancelled (Record 286).

In view of this testimony we think this instruction should have been given.

### III.

An undisputed fact in the case was that in May, 1913, three of the directors of the Clothing Company, including the defendant, at his instance, held a meeting, declared a dividend and authorized the payment of additional salary and commissions for the president and secretary. It is also undisputed that the defendant never received a penny on account of these resolutions or declarations of dividends, etc. It is also undisputed that just before this transaction he bought out his associate, Mr. Frankenstein, and anticipated selling part of the capital stock to another; that he had never received any dividends or other profits out of the business and caused these resolutions to be passed for the purpose of securing an advantage over the person he expected to take an interest in the business, so that he, the defendant, might secure benefits he believed he was entitled to for having built up the business.

In view of this state of facts, the defendant requested the trial court to charge the jury (p. 36 of this brief) that it was no offense, as far as this case is concerned, whether the Clothing Company, at the defendant's instance, declared the dividends shown in the evidence, nor as to how or in what manner they were declared. That such fact became material only and solely in passing upon the question as to whether the defendant had devised the scheme or artifice set out in the indictment. We think that this was a proper application of the general rule of law announced in the court's instruction; was within the issues which the jury were to consider, and should have been given.

This request was supplemented by the defendant asking the trial court to charge that evidence of the above mentioned resolutions adopted by the directors was not admitted in evidence for the purpose of showing that any crime had been committed, but solely upon the question of the defendant's intent (see No. 23 p. 36 of this Brief).

## IV.

Evidence was introduced tending to show, and the defendant admitted that, after the bankruptcy proceeding against his Company was begun on January 21, 1914, he bought about \$7,000 par value of municipal bonds, with corporate funds, and shortly afterwards sold the bonds for cash and he used \$5,000 of this money to secure the surety on the Clothing Company's appeal bond in the bankruptcy case. In view of this evidence the defendant requested the court to charge the jury (see p. 37, of this Brief) that evidence tending to show the purchase of the bonds and their subsequent disposition constituted no offense on the part of the defendant, and that so far as the creditors were affected he had a right to do as he did and that such evidence was admitted solely and only for the consideration of the jury in passing upon the question whether or not the defendant devised a scheme or artifice as charged in the indictment.

With reference to these requests we take leave now to say that since the Government offered, and the trial court admitted, evidence bearing upon these questions for some purpose, and as this evidence was not touched upon or referred to in the court's general charge, we think it was imperative that these limitations should have been placed upon the use to be made by the jury of testimony of the character mentioned, when the defendant requested that these limitations should be stated to the jury.

## V.

The defendant requested the trial court to charge (See p. 37, of this Brief) that it was a matter of no importance in this case whether the defendant paid some of his creditors and left others unpaid, or preferred some creditors as against others. That if they found such creditors as he did pay were paid in good faith and for the purpose of discharging his indebtedness, that evidence with reference to the payment of creditors or the refusal to pay creditors, and all evidence as to the acts and conduct of the defendant in reference to the same was admitted solely and only as bearing upon the question whether the defendant devised the scheme or artifice as charged in the indictment.

We think there can be no question that the refusal to so charge in view of the condition of the evidence which we have heretofore pointed out, was prejudicial error.

In this connection the Government asked witness after witness whether the defendant had paid some specific debts. The defendant testifying in his own behalf stated what creditors he had paid. Evidently it was the purpose of the Government in introducing testimony tending to show that the defendant had not paid some of the Clothing Company's creditors, to have the jury draw the inference that he had devised a scheme or artifice, as charged in the indictment, and intended not to pay those that he did not pay. In view of this purpose we think the jury should have been plainly told that the only consideration to be given to such evidence was as it might bear upon the question whether the defendant devised the scheme or artifice as charged in the indictment.

## VI.

With reference to the mailing of the letters set out in the indictment the court charged the jury (Record 747) that it must appear that they were mailed for the purpose of executing the scheme or artifice, or attempting so to do. This charge was in the language of the statute. The defendant requested the trial court to charge the jury on this point as follows (p. 38, of this Brief).

"The court instructs the jury with reference to the charge that the defendant mailed the letters set out in the indictment, that if they find from the evidence that the same were mailed under depressing circumstances and financial embarrassment confronting him at the time for the purpose and with the intent to secure an extension of time, or additional goods, in good faith, for his sacrifice sale, and with the expectation and intent that he should and would be able to meet his liabilities incurred, and were not mailed with an intent on his part in furtherance of any scheme or artifice to defraud his creditors or to aid in doing so, then you are instructed that the defendant is not guilty in this case."

It will be observed that the court's general charge on the subject of intent does not require the jury to find that the letters set out in the indictment were mailed by the defendant with an intent to carry out the scheme or artifice. This omission in the general charge was attempted to be corrected by the defendant's above request, and we think it requires no argument to show that the request should have been granted and the instruction given.

## VII.

The defendant requested the trial court to charge the jury (see p. 33, of this Brief) :

"The court instructs the jury that if they have a reasonable doubt as to the guilt of the defendant that they must return a verdict for the defendant, and in this connection the jury are instructed that each individual juror must be convinced beyond a reasonable doubt of the guilt of the defendant before they should return a verdict of guilty."

The court's general charge as to reasonable doubt appears on page 21, of this Brief. It does not contain a direction to the jury "that each individual juror must be convinced beyond a reasonable doubt of the guilt of the defendant before they should return a verdict of guilty." The defendant contends that the charge, as requested, should have been given.

In *Grimes v. State*, 105 Ala. 86, it is held :

"The refusal of the court to charge 'that each juryman must separately and segregately be satisfied beyond a reasonable doubt, and to a moral certainty that defendant committed the outrage' before they could find him guilty, was reversible error."

In *Fassinow v. State*, 89 Ind. 235 it was held :

"It is proper to instruct the jury that each juror should act for himself upon his individual convictions in a criminal case and that he should not convict if he has a reasonable doubt of defendant's guilt, but that his doubts should not control the action of the other jurors."

It was also held in *Castle v. State*, 75 Ind. 146 that :

"If any one of the jury, after having duly considered all the evidence, and after having consulted with his fellow jury-men, entertains a reasonable doubt of defendant's guilt, the jury cannot find him guilty."

And also held in *Parker v. State*, 136 Ind. 284, that :

"An instruction that defendant should not be convicted so long as any juror entertains a reasonable doubt of their guilt should be given."

In *State v. Rogers*, 56 Kan. 362, it was held :

"It was proper after instructing the jury that if any one of them entertain a reasonable doubt of defendant's guilt they could not convict, to charge that they could not acquit unless all of them entertain a reasonable doubt."

This court in the case of *Allen v. United States*, 164 U. S. (1. c. 501) had occasion to consider a phase of this question. In that case assignments of error were taken to an instruction given to the jury after the main charge was delivered and when the jury had returned to the court apparently for further instructions; the trial court having first given the general and usual instruction upon reasonable doubt. After the coming in of the jury for further instructions the court instructed in substance:

"That although the verdict must be the verdict of each individual juror and not a mere acquiescence in the conclusion of his fellows, yet they should examine the question submitted, with candor, and with proper regard of the opinions of each other. That it was their duty to decide the case if they could conscientiously do so. That they should listen with a disposition to be convinced, to each other's argument. That if much of a larger number were for conviction a dissenting jury could consider whether his doubt was a reasonable one, which made no impression upon the minds of so many men equally honest, equally intelligent with himself. If, upon the other hand, the majority was for acquittal, the minority ask themselves whether they might not reasonably doubt the correctness of a judgment which was not concurred in by the majority."

Commenting upon and approving this instruction, this court stated that the verdict should represent the opinion of each individual juror.

In view of the rule announced in above cases we think the instruction should have been given.

### VIII.

The defendant requested the trial judge to charge the jury (see p. 39, of this Brief):

That on January 22, 1914, the defendant was served with an injunction prohibiting him from disposing of any of the money or the property of the Badders Clothing Company and from the date of the service of that injunction down to the date of the trial the defendant was prohibited from paying any such debts; and, that no inference against the defendant could be drawn from the fact that none of the debts of the Clothing Company were paid, or attempted to be paid, after that time.

The injunction referred to in this request appears on pp. 862 and 863 of the record. It was issued by the district court in the



proceeding against the Clothing Company, in bankruptcy. It was not, and could not have been disputed. It restrains the defendant and all officers of the Clothing Company from disposing of any of its property.

In this same connection the defendant requested the court to charge (see p. 39, of this Brief) that if they found from the evidence that in December, 1913, and January, 1914, the Clothing Company was insolvent and was being pressed by its creditors, that it could not make payment through its President, or otherwise, to any of its creditors except at the risk of being adjudged a bankrupt.

It is not disputed by the Government that creditors were pressing the Clothing Company for payment of their claims during December and January and it is insisted by the Government, both in the indictment and by its witnesses that the Clothing Company was insolvent. In view of these admitted facts and contentions it is not thought necessary to refer the court to the places in the record where the testimony will be found, but its character can easily be determined from the testimony of the witness Spiesberger (Record, 373) who testified as to his coming to Topeka on December 26, 1913, and pressing the defendant as President of the Clothing Company, for payment of the claim of Alfred Decker & Cohn and stating that the defendant refused to pay, and that he had never been paid. It also may be seen in the testimony of Phillip Lipps (Record, 523) and of the testimony of the defendant (Record, 663, 664, 665) which testimony is to the effect that the creditors were there crowding for payment during the months of December and January, and also in the testimony of Mr. Guggenheim (Record, 375 and 396), from which it appears that he almost lived in Topeka from the latter part of November until early in January, that he was pressing his claim for payment and succeeded in getting some \$4,000 from the defendant; and that the defendant had not paid the balance, amounting to some \$10,000.

We contend that this request should have been granted and that the jury should have been told that they should draw no inference against the defendant because he did not pay these creditors after the time he was served with an injunction which prevented him from doing so.



It certainly would seem strange indeed that the Government could be permitted to introduce in evidence testimony not only tending to show, but actually showing, that the defendant did not pay the debts of the corporation at times and dates when by the order of the court he was absolutely prohibited from doing so, and then that the defendant should not be permitted to have the jury advised of the effect of the injunction. Moreover, we think the jury should have been advised that upon insolvency it is an act of bankruptcy to prefer one creditor over another as bearing upon and explaining why the defendant did not pay the corporate debts, which the Government was at great pains to show that he had not paid.

## IX.

We have previously called attention to the fact that the indictment does not charge the defendant with having devised any scheme or artifice to defraud the Badders Clothing Company of property or money by means of false pretenses, etc.

It would be but a re-statement of the entire record to attempt to show that substantially all of the evidence was with reference to the defendant's connection with the Badders Clothing Company and his dealings with its property and money. In view of this situation the defendant requested the court to instruct (see p. 40, of this Brief) that the indictment charged the defendant with having devised a scheme or artifice to defraud the persons named in the indictment, and other persons, to the grand jurors unknown, and that evidence tending to show that the defendant converted money of the Badders Clothing Company to his own use did not sustain such charge. We think this instruction should have been given as the proof of the defendant's dealings with the Badders Clothing Company was admissible only for the purpose of showing the defendant's scheme or artifice to defraud others than the Badders Clothing Company. In view of the fact that this evidence was admissible for that purpose only the defendant had a right to have the jury told that it was to be limited to the charge contained in the indictment, and what that charge was.

It will be observed that the defendant is charged with having devised a scheme or artifice to defraud the persons named of *property*. As the statute is directed against schemes or artifices for obtaining property or *money* and the indictment does not charge

any scheme or artifice for obtaining money, it necessarily follows that the jury could not convict the defendant for having converted money of the Badders Clothing Company to his own use or having devised a scheme to do so because he was not charged with that offense.

#### X.

The defendant requested the court to charge the jury (see p. 40 of this Brief) that the stock of goods in question belonged to the Badders Clothing Company and not to its creditors, and that it had a right to sell the same, or any portion of it for any price it saw fit, or to dispose of the property in any way it saw fit, and that the evidence introduced with reference to that subject was admitted solely and only for the purpose of bearing upon the question as to whether the defendant devised the scheme or artifice as charged in the indictment.

It is plain that the evidence as to the disposition made of the goods in the Badders Clothing Company store was not admissible for all purposes, but only for the purposes indicated in this request, and as the court had not limited the effect of the testimony in its general charge this instruction should have been given.

#### XI.

The defendant requested the court to charge (see p. 41, of this Brief) that if they found from the evidence that the Clothing Company was in good faith intending to continue in business after the sale, and had made arrangements to do so by cutting down the floor space, ordering fixtures, and the like, that they should take such facts into consideration in passing upon the intent of the defendant. This instruction was refused. Both the witness Boyd (Record, 621) and the defendant testified that arrangements had been made for continuing the business after the sale, and fixtures had been bought and some of them delivered; that negotiations were on foot looking to sub-leasing of a part of the store occupied by the Clothing Company to the United Cigar Stores Company so as to cut down expenses. This evidence was admissible as tending to show that the defendant intended to carry on business at the same place, and as circumstances tending to rebut any inference that he had devised a scheme or artifice to defraud any one. Having admitted the evidence, we think the court should have instructed the jury as to its effect. Nothing in the general charge covers this matter.

## XII.

The defendant requested the court to charge the jury (see p. 41, of this Brief) in substance, that the defendant's conduct in dealing with the cash and property of the Badders Clothing Company was not an issue in the case and that he could not be convicted for any transactions between himself and the company or for any alleged breach of duty between himself and the company, and that any and all transactions between himself and his company were admitted in evidence only as bearing upon the question as to whether the defendant intended to defraud the creditors, as charged in the indictment.

We repeat that the evidence referred to in this request was admissible only for the purpose indicated and since the general charge of the court did not limit the effect of this evidence the defendant's request to properly limit it should have been granted.

## XIII.

The defendant requested the court to charge (See p. 42 of this brief) that if they found from the evidence that a previous sale conducted in 1911 by the defendant for the Clothing Company had been freely advertised, creditors notified and generally conducted in similar circumstances as the sale of December, 1913, was conducted, and that after such sale in 1911, the defendant had paid up the debts of the Clothing Company and continued in business, that they should take such facts into consideration in passing upon the question as to whether the defendant had devised any scheme or artifice as charged in the indictment. This request was refused.

Nothing in the court's charge covers this point. We have heretofore commented upon the testimony as to a previous sale conducted under similar circumstances by the same sales-managers, which proved very successful, and afterwards the defendant paid all of the debts of the Marshall Clothing Company. One of the assignments of error is that the court declined to allow the full interrogation of the witness Wallace as to how that sale was conducted, etc., yet considerable evidence along this line got before the jury. The purpose of this evidence was to rebut any inference the jury otherwise might draw from the testimony introduced by the Government tending to show that a part of the defendant's scheme or artifice was to have a sensational or sacrifice sale. Indeed this is one of the facts charged in the indict-

ment. Evidence on the subject of the sale in 1913, offered by the Government was germane to the question of the defendant's intent and to the question whether he had devised the scheme or artifice as charged in the indictment. The purpose of the defendant in offering evidence of a previous sale conducted by the same sales-managers and in similar circumstances after which he had paid his debts, was to rebut any inference that the jury might draw from the Government's testimony on the subject of the second sale. This evidence was admissible for such purpose so that one of the issues before the jury was whether or not the sale of 1913 was in good faith. Upon this issue testimony of previous sale conducted in the same way, should have been considered as bearing upon the intent of the defendant and the purpose of such evidence and the issue thus presented should have been called to the attention of the jury by the requested charge.

The above instructions requested by the defendant were all upon matters in issue before the jury; they were all germane to the question of the defendant's intent; they all referred to evidence admitted upon the issue as to whether the defendant had mailed the letters set out in the indictment or any of them, for the purpose of executing a previously devised scheme or artifice for obtaining property from the persons named in the indictment by means of false pretenses and fraudulent promises. None of the evidence introduced by the Government should have been considered by the jury as though the defendant was on trial for having conducted the Badders Clothing Company or for having improperly disposed of any of its money or goods, or for having preferred his creditors, or for having evaded the payment of any debts due from him or from the Clothing Company, or for having converted money of the Clothing Company into bonds and then into cash. Without clear instructions limiting the effect of evidence upon such matters, we think the jury easily might be confused as to what they were actually trying. The court's charge contains correct general principles of law applicable to the case under consideration but fails to apply those principles to the issues which the jury actually were to try. We think that each of these requests should have been granted, and we are not satisfied that the jury ever thoroughly understood that they were not trying the defendant for having converted money belonging to the Badders Clothing Company to his own use. We confidently say that each of the requested instructions was undeniably correct in point of law; that each

them related to an issue made by the testimony, and that each of them tended to clarify the questions which the jury was called upon to determine.

We submit that the refusal to give these instructions constituted material and prejudicial error for which the judgment should be reversed.

**The evidence is insufficient to sustain verdicts of guilty as to any of the counts of the indictment.**

All that the Government's evidence, taken as a whole, tended to prove was that a young man twenty-nine years old, without experience in the retail clothing business, in 1911 purchased a run down retail clothing store in Topeka, by using all the cash he had saved by economies practiced as a newsboy and otherwise, and having the assistance of a local banker. We may conclude that this young man must have had unusual industry and some ability to have taken this broken down retail clothing business with assets consisting entirely of the worst stock of clothing an experienced clothing manufacturer ever saw, and with outstanding liabilities amounting to over \$40,000, conducting a sale of this old clothing so successfully as to realize some \$60,000 with which he immediately paid all of the liabilities he had assumed, in full. About two years later the failure of a competitor suggested another sale, for which preparations were made just as they had been made for the previous sale. This second sale was started during an unprecedentedly bad season, for some time progressed well, but as a result produced but little more than one-half of what the previous sale had produced. No one can doubt from the testimony that the creditors were watching the sale and that when it appeared that it would not be successful, each of them sought an advantage by securing the payment of his claim. They were in Topeka pressing their claims, many of which were in the hands of attorneys, and some of them in suit. This young man was confronted with a situation that might well have embarrassed an older and more experienced merchant. On the one hand was the imminence of bankruptcy proceedings, if he paid any of the insistent creditors, and on the other hand was a possibility of his reorganizing his business, cutting down his expenses and continuing on a smaller scale. That his wife was about to be confined and was very sick is an incident bearing upon his mental condition, and consequent inability to handle a situation which was perhaps impossible at the best. At

all events, what he did is what one would have expected this man to do, because of what he had done before. Out of the proceeds of the former sale he had paid all of the debts because he had money enough to do so. Out of the second sale he paid all that he could pay with the means at his command. There is no contradiction in the testimony that after the trouble was over the defendant did not have any money at all. He frankly accounts for every penny he received. That the persons to whom he paid the money were creditors is undisputed. There is no evidence tending to show that any of the proceeds of the sale were intended by him for his own benefit. After evading, as merchants in such circumstances nearly always do, the payment of certain of his creditors, giving way to the pressing demands of others, the business was finally thrown into bankruptcy—within two weeks after the close of the sale, and the defendant enjoined from disposing of any of the Clothing Company's assets.

We venture to say that a fair inference from the testimony is that no one ever dreamed of charging the defendant with having used the United States postoffice establishment for the purpose of executing a scheme or artifice to defraud until after it was learned that his sale had proved to be unsuccessful, and that he was unable to pay the creditors in full.

In the clamor of Eastern creditors will be found the birthplace of the charge made by the Government. It was an afterthought. This case affords a conspicuous example of a far-fetched application of the Federal Government to punish an unsuccessful merchant for having failed to pay all of his creditors in full. No other characterization is applicable to the facts disclosed by the testimony. We contend that this statute was never enacted to be used as a tool by dissatisfied creditors to visit their wrath and disappointment upon the unfortunate merchant whose inability to pay is clearly and unequivocally shown to be due solely to the failure to successfully dispose of the goods which he had bought. There is no evidence upon the record showing or tending to show any intent on the part of this defendant to use the United States mails for any other purpose than to order goods, or to answer letters, or to explain to his creditors his situation—by letters, which if he had succeeded would be characterized as good business communications, but looked at through the light of his failure are said by the Government to be fraudulent.

If this case be stripped of inferences based upon the failure of the second sale to realize the confident expectations, the defendant justly had, because of his single previous experience, there is not enough left of it to justify the conviction of this defendant of anything whatever. If there is any scheme or artifice in this case it is the cunning with which the creditors have inoculated the Government's attorney in preparing the indictment. That circumstances which would have been innocent except for the business failure, could be tortured into conclusive evidence of guilty intent is a tribute to the ingenuity of those who incited this prosecution. All of the defendant's acts are inconsistent with a guilty purpose and consistent with the single intent on his part to conduct a successful sale, and pay off his creditors. The fact that he did use every dollar of money received in the payment of valid claims, not retaining anything for himself; the fact that on one previous occasion similar in all respects to the one in question, he had done the same thing, should convince any mind open to conviction that there is nothing in the testimony justifying the refusal of the trial court to direct the jury to return verdicts of not guilty as to all of the counts.

To descend to somewhat technical matters, we advert to a subject covered elsewhere in the brief, namely, the perfunctory character of the testimony offered by the Government to show that the defendant mailed any of the letters set out in the indictment "for the purpose of executing" a previously devised scheme or artifice. We call attention to the evidence upon which the Government relied to show the mailing of these letters within the jurisdiction of the court, and we are satisfied that an examination of this evidence will show that unless the court starts with a presumption of the defendant's guilt it cannot find sufficient evidence to support the verdicts of guilty.

We understand that it is claimed by the Government that in this class of cases, if a witness testifies that he received a letter from a letter carrier in New York, that testimony is sufficient for the jury to find that the letter was mailed; that it was mailed within the jurisdiction of the court trying the case in Kansas; that it establishes that the letter was mailed for the purpose of executing a previously devised scheme or artifice; and, if the letter is shown to have been signed by the defendant, that the claim of proof is complete.



In this case the fact that the defendant signed any of the letters rests upon the testimony of the witness Boyd, who said that he thought the signatures were the signatures of the defendant. With reference to one of the letters he was asked (Record 471):

"I hand you a paper marked Exhibit 86, and ask you to state if that bears the signature of the defendant?"

A. I think that it is.

Q. That is your judgment; that is his signature; what is your opinion about it?

A. I won't say.

Q. Don't you want to say for sure?

A. No, sir."

The paper was admitted in evidence, notwithstanding the objection made by the defendant. In view of the fact that this witness answered every one of the questions relative to the defendant's signature by saying: "I think it does" and his explanation of what he meant when he said that, we think the Government wholly failed to establish that the defendant ever wrote the letters set out in the indictment.

Except as to the letter counted upon in Count No. 2, with reference to which an envelope was produced bearing the postmark at Topeka, Kansas—there is absolutely no testimony that any of the letters in question were mailed within the jurisdiction of the court. Is it possible that the defendant can be convicted of having mailed letters at Topeka, Kansas, in the absence of any testimony tending to show that fact?

Previously, we have called attention to the decisions supporting the rule that in criminal cases it is not proper to infer intent as such intent may be inferred in civil cases. The jury must find the fact of intent as a fact and not as an inference. It should be remembered that in this class of cases the court is dealing with an attempt not accomplished. Therefore the evil intent only can be punished and this intent must be charged and found with directness and precision and not as a matter of inference.

Elsewhere we refer to the decision of *People v. Flack*, 125 N. Y. 325, as sustaining the view that the law does not infer a fraudulent intent from certain facts. That was a case of conspiracy in the course of which the court pointed out, that actual criminal or wrongful purpose must accompany the agreement, and if that were absent the crime of conspiracy had not been committed.



In the course of the opinion the court said:

"The presumption that a person intends the ordinary consequence of his act is as applied to criminal cases, a rule to aid the jury in reaching a conclusion upon a question of fact and is not a presumption of law, and on the trial of an indictment the intent is traversable, and the defendant may testify as to his intent."

We think that the cases of which the above is a type, establish the rule that the law does not infer an intent to use the post office establishment for the purpose of executing a fraudulent scheme or device, merely from the fact that a letter is found in the mail outside of the jurisdictional district shown with more or less certainty to have been written by the defendant.

Certainly the law does not infer from that fact, in a criminal case, that it was mailed at any particular place, if that inference is against the innocence of the defendant. We think that the intimations in many of the cases decided by the lower federal courts that presumptions and inferences are to be drawn from such facts against the innocence and in favor of the guilt of the defendant, because they may be the ordinary consequences of what he does, ought not to receive the approval of this court.

We insist that the court should have directed verdicts in favor of the defendant.

a. Because the evidence failed to show that defendant has committed or intended to commit an offense of any kind.

b. Because the Government failed to show that the defendant had written the letters in question;

c. The Government failed to prove that any letters had been mailed "for the purpose of executing" a scheme or artifice as charged;

d. And failed to prove that any letter had been mailed within the jurisdiction of the court; and

e. Failed to prove that any letters had been mailed with intent to use the Post Office establishment as a means or instrumentality for the accomplishment of the alleged scheme or artifice.

Respectfully submitted,

D. R. HITE,  
JAS. H. HARKLESS,  
CLIFFORD HISTED,

*Attorneys for Plaintiff in Error.*

Office Supreme Court.

FILED

DEC 18 1913

JAMES D. MAHONEY

CL

No. 521.

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IN THE  
**Supreme Court of the United States**

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GEORGE S. BADDERS, PLAINTIFF IN ERROR,

VS.

UNITED STATES OF AMERICA, DEFENDANT  
IN ERROR.

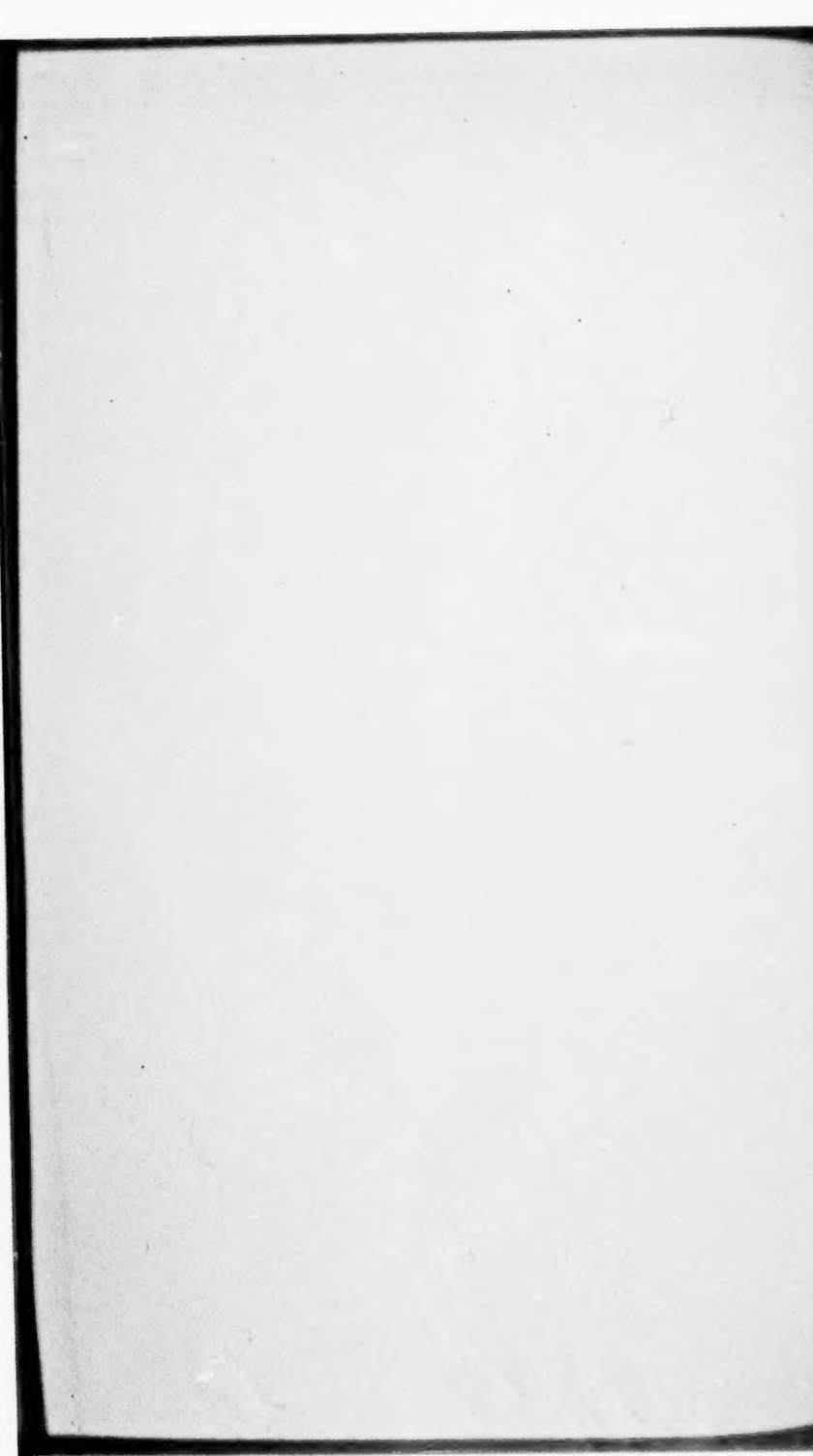
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**ANSWER OF PLAINTIFF IN ERROR TO MO-  
TION TO DISMISS OR TO PLACE ON  
THE SUMMARY DOCKET.**

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D. R. HITE,  
JAS. H. HARKLESS,  
CLIFFORD HISTED,

*Attorneys for Plaintiff in Error.*



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**As to the bills of exceptions and assignments of error.**

The solicitor general cites in support of the first ground of his motion a number of cases which we think have no application to this record. The meagre statement in the printed motion and brief is so misleading that merely calling attention to the omissions should be a sufficient answer to the contention that the bills of exceptions and assignments of error are contrary to the proper practice as indicated by the rules of this court.

The record shows a trial lasting from January 19, 1914, to February 2, 1914, with several night sessions. It shows that the trial court declined to accept bail after the verdicts until and unless a writ of error was allowed. It shows that it was impossible for the stenographer who reported the case to copy her notes of the testimony within the time allowed by the rule of this court for the return of the citation and filing a transcript of the record, which, of course, included bills of exceptions. It shows that pursuant to the inflexible rule of the statute regulating appeals and writs of error, the assignments of error had to be prepared and filed with the petition for the writ of error, and because the accused was not admitted to bail, contrary to the usual practice in this district, until the petition for the writ of error was granted, the assignments of error could not be fully completed by stating the substance of the evidence excepted to without prolonging the imprisonment of the accused under a

judgment and sentence which he was advised is erroneous. This record shows that among other things the accused requested directed verdicts in his favor at the close of all of the evidence. It shows that without bringing to this court bills of exceptions containing all of the evidence upon which these requests were founded, the refusal of the trial court to direct verdicts in favor of the plaintiff in error could not have been reviewed. It shows that nearly one-half of the assignments of error grew out of the refusal of the trial court to give instructions requested by the plaintiff in error.

Under the rule of this court, as well as of the several courts of appeals, such assignments or specifications of error are required to set out *totidem verbis* the instructions so requested and refused. The record shows that many of the remaining assignments of error are predicated upon the admission of evidence to which the plaintiff in error objected and to the rulings of the court properly excepted to. Under the rule in such cases the substance of the evidence objected to, with the ruling of the trial court, and the exception thereto, must be set out so distinctly as to apprise the reviewing court of the precise error complained of. In the absence of the reporter's transcript and because of the necessity of filing the assignments of error with the petition for the writ of error, counsel for the accused secured from the trial court leave to amend the several assignments of error relating to the admission or rejection of testimony when the transcript could be completed. This record shows

also that owing to the inability of the stenographer to complete the transcript of her notes the time for lodging the transcript of the record in this court was enlarged, with the consent of the United States District Attorney. We think it sufficient to say that if the assignments of error and bills of exceptions had been abbreviated in the circumstances presented, the solicitor general now would be contending that the plaintiff in error had not brought to this court such bills of exceptions as would entitle him to a review of the refusal of the trial court to direct verdicts in his favor, and would have asked this court to deny the accused his right to have such rulings re-examined in this court.

Counsel for the plaintiff in error deprecate any intentional burdening of this court with labor which should be performed by them in the presentation of the exceptions upon which the writ of error is predicated. Counsel are now engaged in the preparation of an abstract, in narrative form, of the oral testimony, and of the documentary evidence for submission to the government, so as to shorten the printed record by stipulation which is a common and accepted practice; and, in this manner, economize the time of the court and lessen expense attending upon the printing of so large a record. We do not think that we are called upon in answering such a motion to go further than to bring to the attention of the court, circumstances, perhaps peculiar to this case, which justify the course that was adopted. The case was tried by the District Judge for the Eastern District

of Missouri, who was assigned to the District of Kansas because of the disqualification of the regular district judge. Although the practice of requiring the presentation of assignments of error with a petition for the allowance of a writ of error before a convicted defendant could be allowed to bail was unknown to the District of Kansas. The practice in that District consistently has been that after verdict of guilty upon notice of counsel for the defendant of the filing of a motion for a new trial and of an application for the allowance of a writ of error, to enlarge the defendant upon the bail bond for his attendance heretofore given and which under such practice has been determined to be sufficient to compel his attendance, until a supersedeas bond was allowed. In the present case this practice was not followed, with the result that a writ of error was applied for just as soon as assignments of error could be prepared and presented. The shortness of the time allowed for the return of the writ of error to this court, together with the inability of the reporter to transcribe her notes, is the reason why the bills of exceptions were not reduced to narrative form, and accounts, in some measure, for a few assignments of error which might have been more concise.

The cases cited by the Solicitor General undoubtedly are just criticisms of the practice of burdening this court with labors of examination of prolix records. We have examined all of them and cannot agree that they condition the right of a review of such instructions as we have indicated upon abbreviated bills of excep-



tions in circumstances such as appear in this case; nor that any of them relaxes the rule that specifications of error relating to instructions and to rulings on evidence shall contain the instruction requested, the exception to the refusal to grant it, and, also, the substance of the objectionable evidence which gives rise to the ruling and the exception thereto.

The contention that the assignments of error are too numerous, must, of course, be always a question to be determined from the nature and character of the case, doubtless many cases justify, and of necessity demand, in order to preserve the many questions of contest, a large number of assignments. It cannot be said that the number of assignments complained of in this case were not justified, until and upon the presentation of the case. Then it may be more properly considered whether counsel were justified. Indeed what may appear to be a large assignment of errors may be entirely obviated by the reduction of many under one head of discussion and when finally reduced for presentation to the court, no such complaint as the Government makes may arise at all. The Government nor the court can be in any way embarrassed or inconvenienced by the fact that a numerous assignment of errors exist in the original record, until it is seen upon presentation of the case how many become in the last analysis a subject for review, and it would appear that then, and for the first time in the case it shall become necessary to castigate counsel upon that subject, if indeed castigation shall then be in

order. Certainly the court will not anticipate this question upon a motion to dismiss the case. The case to which the Government refers in the 238 United States was a case where the court was embarrassed by a numerous assignment of errors *presented for review*. We cannot believe that even in that case, however numerous the assignments in the original record, if the number finally called to the court's attention *for review*, were not necessarily burdensome, the displeasure of the court would have been manifested. Counsel for the accused, however, will earnestly insist if such question shall ever properly arise in the case, that the assignments of error were all made with propriety, even though on the final hearing of the cause, many of them may not be deemed important standing alone, and may be grouped under abbreviated propositions.

## II.

**The constitutional questions are neither frivolous nor without merit.**

The second ground of the motion to dismiss will be discussed. It is founded upon the decision of this court in *Brolan v. U. S.*, 236 U. S. 216, 222. In that case the defendant was indicted for concealing and facilitating the transportation of opium wrongfully imported into the United States, with knowledge of such provisions and illegal importation. The defendant solicited the jurisdiction of this court upon the single proposition that the clause of the statute under which

he was convicted was unconstitutional. So far as it is possible to judge of his argument from the opinion of this court, it was that the power of Congress over the importation of opium and imposing punishments therefor ceased when the contraband article once came into the country. This court held that in view of the plenary power conferred upon Congress to regulate commerce among the several states and with foreign nations the argument that this power ceased upon the arrival of the contraband article into the United States, was frivolous and concluded:

"There being no possible ground upon which to attribute even semblance of foundation for the constitutional question relied upon, it follows that it affords no basis for our jurisdiction to directly review, and the writ of error is dismissed for want of jurisdiction."

If this language is appropriate to the contentions made by the plaintiff in error in this case the writ of error should be dismissed. Before attempting to discuss the assignments of error which the Solicitor General has selected from the record as the only ones relating to the constitutional questions involved in this record, we must call the attention of the court to others to which he does not refer. The fourth, fifth and sixth assignments of error challenge the trial court's ruling upon that portion of the defendant's motion to quash the indictment which alleged that such indictment had not been found or presented by a grand jury as required by law. While we think we are not called upon to expatiate upon the

grounds for this challenge, we point out that the record shows that while the District Court for the District of Kansas was not in session, having been adjourned to a day certain, and while there was no United States Judge for such District within the territorial limits of the State of Kansas, certain persons summoned as grand jurors examined witnesses, held deliberations, and considered charges against this defendant and voted upon the matter, all of which it is contended by the defendant was contrary to law. He contends also that the indictment was never presented to the court by the grand jury, and that upon the record, there is no foundation for the claim that such indictment was presented as required by law by a duly qualified grand jury. If the contention made by the defendant thus briefly referred to is frivolous, then the Supreme Court of New York must be held to be equally frivolous, for in the case of *People v. Rotoli*, 115 N. Y. Supplement 854, it was held that :

“After the judge presiding at trial term has discharged his trial jurors and excuses his court officers, but ordered that the court be continued open but stand at recess, and then engaged in his duties in other counties, leaving the grand jury in session, and thereafter returned and discharged them. Held, That during his absence the court was not organized for business and an indictment found by the grand jury was invalid.”

Counsel for Mr. Badders contend that the record in the present case shows facts almost identical with those presented in the case just cited. The regular United

States District Judge adjourned the court until a day certain and left the district to hold court in another state, and during his absence and while the court was not organized for business the pretended grand jury proceeded just as though the court was organized and doing business. Moreover, these assignments of error challenge the record of the presentment of the indictment found in the circumstances just related. The record shows, we think, that the indictment was not presented to the court by the grand jury, but was accepted without any polling of the jury and without any evidence that it was the action of the grand jury other than the fact that the paper itself was handed in to the clerk in the presence of the court. An analogous case upon which counsel for the plaintiff in error rely, in which the Circuit Court of Appeals for the Fourth Circuit consider many of the questions covered by these assignments of error, is *Renigar v. U. S.*, 172 Fed. 646, and we take leave to commend this case to the particular attention of the court.

Section 238 of the Judicial Code confers upon this court jurisdiction, "in any case that involves the construction or application of the constitution of the United States." We think it requires no further argument to show that if, upon this record, it appears that the plaintiff in error has been held to answer for an infamous crime without a lawful presentment or indictment by a lawful grand jury, the case involves the application of that clause of Article Five of the Amendments to the Con-

stitution which provides that, "no person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury."

Assignment of Error No. Seventeen challenges the ruling of the trial court denying defendant's motion for time in which to procure testimony. An examination of this motion shows that when the case was called for trial the court was advised that certain papers belonging to the defendant were not in possession of a receiver appointed in a bankruptcy proceeding pending in the same court; that such papers were indispensable in the preparation of the defendant's case; that upon such showing the trial court made an order in this case directing the receiver to produce the papers in question at the court room where the case was being tried so as to give the defendant an opportunity of inspecting and using them; that soon after this order was made and after the case was begun the receiver reported that the papers in question could not be found and that he had just discovered their loss. The motion further shows by a full description of the papers that it would be highly prejudicial for the defendant to go into his defense without obtaining the papers or secondary evidence of their contents which the motion shows was obtainable; that as he was required to be in constant attendance upon the trial court during the course of the trial, he was unable himself to make a search for the required papers; that these papers or secondary evidence of their contents would constitute strong evidence in

his favor and that without these papers or evidence of their contents, which he was able to procure, the defendant would be compelled to go upon the witness stand and thereby rights secured to him by Articles Five and Six of the Amendments to the Federal Constitution would be impaired; that even if he, in such circumstances, went upon the witness stand the absence of the papers referred to or secondary evidence of the contents, which he could obtain if given time and opportunity, would deprive him of corroborative evidence to which he was justly entitled. This assignment of error and the motion to which it relates are not referred to by the Solicitor General in his motion and brief. We submit that the constitutional questions raised by this ruling of the trial court cannot be denominated as frivolous.

Assignment of Error No. Eighteen challenges the action of the trial court in proceeding with the trial of the cause before the defendant was arraigned. In *Crain v. U. S.*, 162 U. S. 625, the record failed to show that the accused was ever formally arraigned. In the opinion delivered by Mr. Justice Harlan it is said:

“Neither sound reason nor public policy justifies any departure from settled principles applicable to criminal prosecutions for infamous crimes. Even if there were wide divergence among the authorities upon this subject, safety lies in adhering to established modes of procedure devised for the security of life and liberty, nor ought the courts in their abhorrence of crime, nor because of their

anxiety to enforce the law against criminals, countenance the careless manner in which the records of cases involving the life or liberty of an accused, are often prepared."

The case was reversed upon this ground. We contend that a defendant in criminal cases is deprived of a constitutional right when the court proceeds with his trial without arraignment. The record in this case shows that after the jury was impaneled it was attempted to arraign the defendant; that he then called the court's attention to the fact that the trial had begun, but the court ruled that it was unnecessary to retrace the steps taken and proceeded over his objection and exception as though he had been arraigned before the jury was called. Whether this constitutes an infringement upon his constitutional rights or not remains a subject of argument, which this defendant should not be called upon to present on a motion to dismiss.

Before undertaking to answer the charge that the constitutional objections made to Section 215 of the Criminal Code are frivolous, we call attention to Assignment of Error No. Sixty-one, which appears on page 29 of the Solicitor General's brief. This assignment challenges the action of the trial court in denying defendant's motion in arrest of judgment as to the grounds upon which he was convicted. This ground of the motion is that it appears from the record that the government failed as to the first count of the in-



dictment to prove the scheme or artifice charged in that count and that the court so held in sustaining defendant's demurrer to the evidence introduced in support of such first count. An examination of the indictment which appears on pages 9-24 of the Solicitor General's brief shows that the scheme or artifice is set out in the first count and by reference made a part of each of the subsequent counts. It would seem to follow as a matter of course that if the trial court sustained the demurrer to the first count, not only because of failure of proof to show the use of the postoffice establishment, but also because of failure of proof to devising of the scheme or artifice therein set out, and the jury returned a verdict in favor of the defendant upon the first count; for such reasons that the evidence for other counts which charged the scheme or artifice to defraud by reference only to a count which has not been sustained, and all of such counts are tried together, the defendant is entitled to his discharge on motion in arrest of judgment on the ground that, having been subject to a trial and acquitted on the first count, he cannot be arraigned for the same crime on any other counts. Of course the decisions of this court are to the effect that under Section 5480 of the Revised Statutes a conviction or acquittal on one count of such an indictment would not constitute a bar to a conviction upon another count or under another indictment charging a different use of the mails, but there is no decision by this court, and we would not expect to find one, that

where the same scheme or artifice is made the basis of the charge of fraudulently using the mails in a second indictment, and the defendant shows that under a previous indictment the same charge he has been acquitted, because of failure of proof of the devising of such scheme, that such previous acquittal would not be a bar to the second action. In other words, by this assignment the defendant asserts that he was tried and acquitted on the charge of using the mails for the purpose of executing a certain scheme or artifice to defraud; that his acquittal was as much upon the ground that he had not devised such scheme or artifice as upon a failure of proof that the mails had been used for the purpose of executing the same, and that he is now to be tried for having used the mails in aid of the same scheme, which he has established he did not devise. This is an entirely different question from that presented in any of the cases referred to by the Solicitor General. In those cases it was not contended that the government had failed in its proof as to the scheme or artifice. The contention was that the government merely failed to show a particular use of the mails. We confess that we are unable to see any frivolity in this contention. The joining of several counts in a single indictment is a mere matter of form. Its effect upon the defendant cannot be different from that which would result from separate trials under separate indictments. We have only to suppose that the defendant had been acquitted upon the first count alone; that

upon a trial of that count he had been acquitted; that subsequently another indictment had been found charging the same scheme or artifice as that contained in the previous indictment and the depositing of a different letter. Would or would not the acquittal in the first action be a bar to the second indictment? We think there can be no doubt that it would be such a bar; and for the reason that the acquittal in the first action would conclusively establish that the defendant had not devised the scheme or artifice which constituted an essential element of the offense charged in the second indictment. If we are correct in the supposed case then this assignment of error should be sustained. At all events it is not frivolous.

### III.

**The constitutional objections to Section 215 as applied to the indictment and record in this case are not frivolous.**

In his argument the Solicitor General states that this Section does not attempt to punish the offense of defrauding or attempting to defraud, but the use of the mails in furtherance of such a scheme; and therefore it is within the well recognized field of constitutional authority conferred upon Congress. He says that there can be no substantial difference between the power of Congress to punish the use of the mails for the purpose of promoting a scheme or artifice to defraud and the power

of Congress to prescribe what shall be carried in the mails and what shall be excluded from them, and he refers to a number of cases decided by this court, which he says establish beyond any question the constitutionality of this section. Accordingly, he concludes that since this court has repeatedly determined that the section is within the constitutional grant of power to Congress any objection now urged on the ground of the unconstitutionality of the section necessarily is frivolous. He does not cite any case decided by this court involving the constitutionality of this particular section. All the cases he refers dealt with Section 5480 of the revised statutes which he says is the predecessor statute to the one now in question. Before referring to other grants of power contained in Article 10 of the Constitution in which section the grant of power to establish post offices and post roads is found, we take leave to direct this court's attention to the Acts of Congress which preceded the enactment of Section 215. Original Section 5480 of the Revised Statutes so amended by the Act of March 2, 1889, by adding several limiting phrases to the original Act; also by adding a provision that a person who should cause any letter to be placed in a post office should be deemed guilty. In Section 215 appear several distinct changes from the former acts. As repeatedly held by this court in order to be convicted under Section 5480 it was necessary to prove not only the devising of a scheme or artifice, and the placing of a letter or packet in the mail in furtherance of such scheme, but that it also must

be proved that the person charged devised the effectuation of the scheme to be by means of the post office establishment. In other words, that the crime consisted of three elements; first, the devising of a scheme or artifice to defraud; second, an intention that such scheme or artifice was to be effected by the use of the post office establishment; and, third, the actual use of such establishment for the purpose of executing such scheme. The present act omits the second element; so that all that is necessary to charge is the devising of a scheme or artifice to defraud and the depositing of a letter in the post office for the purpose of executing such scheme. It must be observed also that Section 5480, both as originally enacted and as amended by the Act of March 2, 1889, included several different offenses. When schemes to sell counterfeit money were included by the Amendment of March 2, 1889, the question arose in the case of *Street v. U. S.*, 160 U. S. 128, whether a scheme or artifice to sell or dispose of counterfeit or spurious money was a distinct crime, or where it was embraced in the language "scheme or artifice to defraud." This court held that it was a distinct offense and that it was unnecessary to prove the devising of a scheme or artifice to defraud; that all that it was necessary to charge and prove in such a case was a scheme to sell counterfeit money; that such scheme was intended to be effected and was effected by communication through the post office establishment; that such a scheme was not a scheme to defraud but a scheme to sell counterfeit money and therefore no proof of a scheme

to defraud was necessary to support it. In other words, the statute provided in the disjunctive for punishing the use of the mails for the purpose of executing schemes to defraud; or, scheme to sell counterfeit money. In Section 215 Congress has carved out of the original words, "any scheme or artifice to defraud" a new offense, *i. e.*; "any scheme or artifice for obtaining money or property by means of false or fraudulent pretenses, representations or promises." It may be difficult to distinguish a scheme or artifice for obtaining property or money by means of false pretenses or promises from a scheme to defraud, but this distinction is made in the statute itself and must be observed by the court. Thus a distinct change appeared in the new Act. Perhaps the most radical change is the failure to provide as an ingredient of the offense that the scheme shall include the intention to use the post office establishment in carrying it out. The most important change, however, lies in the omission of that part of Section 5480, carried into the Act of March 2, 1889, that the punishment for mailing three letters in any one six months could not exceed eighteen months in the penitentiary and a fine of \$1500.00. In the case of *In Re Henry* this court determined that the mailing of each letter constituted a separate offense under Section 5480. The present statute enacts that the punishment for the offense may be five years in the penitentiary and a fine of \$1000. If the rule announced in the case of *In Re Henry* applies to this statute the mailing of a single letter "for the purpose of executing such scheme

or artifice or attempting to do so" may be punished by imprisonment for five years and by a fine of \$1000. There is no direction in the present statute, such as was embodied in all of the previous statutes on this subject, that the court shall apportion the punishment to the extent to which the post office is used in effecting the scheme. Under the present statute, if the facts justify the pleader may charge the devising of a scheme or artifice to defraud, or, a scheme or artifice for obtaining money or property by means of false or fraudulent representations or promises, but he cannot include both in a single count any more than he could combine in one count a scheme or artifice for obtaining money or property by means of false or fraudulent pretenses, promises or representations, and a scheme or artifice to sell counterfeit money. In this indictment the offense charge is using the mails to carry into effect a scheme for obtaining property by false and fraudulent promises and pretenses.

It is at once apparent that if the rule announced in the case *In Re Henry* is applicable to Section 215 then under the indictment in this case containing twelve counts, the defendant could have been imprisoned in the penitentiary for sixty years and fined twelve thousand dollars. And such a sentence would constitute no bar to future prosecutions on account of mailing or receiving letters, packages or advertising matter of which there were probably twenty-five introduced in evidence, and all of which it is alleged were either mailed or received

by the defendant. In other words, the application to this section of the rule announced in the Henry case means that in an ordinary criminal prosecution under this section District Judges may imprison a defendant for the term of his natural life as a punishment for having mailed or received letters, which in and of themselves constitute no offense whatever. It is sometimes valuable to fully appreciate the common understanding of mankind as to the interpretation of criminal statutes. By a refinement of reason as it seems to us, it has been held that the offense against the United States consists in using the mails, but this interpretation never has been accepted by the lay mind. It is difficult to understand the imprisonment of a man for the term of his natural life for the act of depositing a series of letters or advertisements in the post office. We think, therefore, that if the rule announced in the case of *In re Henry* is adhered to as a lawful interpretation of the intent of Congress as shown by Section 215, that section is unconstitutional as imposing cruel and unusual punishments. We compare the punishment inflicted by this statute with the punishment for the offense of obtaining money or property by means of false pretenses, under the criminal statute relating to this offense enacted by the several states. Such a comparison shows that no state in the Union; indeed no state in the civilized world has attempted to impose such a punishment for such an offense. It well may be said, therefore, that in the estimation of the legislators of the civilized world, imprisonment for life for mailing a series



of letters all designed for the single purpose of obtaining money or property by means of false promises or pretenses, is a cruel and unusual punishment. We are not dealing with a series of schemes nor a series of pretenses for the obtaining of different article of property, but with carrying out a single scheme. We are not dealing with letters which in and of themselves contain the false or fraudulent pretense, because it seems to be the rule of this court that it is unnecessary for the government to prove that the letters actually placed in the post office in and of themselves contain the false promises or pretenses. In the present case none of the letters charged to have been mailed for the purpose of executing the scheme are alleged to contain any false or fraudulent pretense, promise or representation. We have therefore, the case of a number of overt acts committed by the defendant all for the purpose of carrying out the object which he has in mind, namely; the scheme or artifice for obtaining property or money. From another point of view this consideration should not prevail as to the present statute. Section 37 of the Criminal Code provides against conspiracy by two or more persons to commit an offense against the United States, and enacts that if, "one or more of such persons do any act to effect the object of the conspiracy" they shall be punished, etc. Assuming the existence of a conspiracy it never has been held that each overt act constituted a separate offense. There is but little distinction to be made between two or more persons devising a scheme to defraud the United

States and two or more persons conspiring to do the same thing. Indeed, a scheme or artifice devised by a single person to defraud the United States would come within Section 215, if such person for the purpose of executing the scheme committed the overt act of depositing a letter or packet in the post office. We submit that when Congress increased the punishment and omitted from the new statute the provisions found in Section 5480 amended and continued in the Act of March 2, 1889, directing the court to proportion the punishment to the use made of the post office establishment, in carrying out the scheme or artifice, indicates that Congress intended to punish the person who devised the scheme or artifice and used the mails for the purpose of carrying out such scheme in the same way that Congress intended to punish persons who conspired to defraud the United States and committed overt acts in furtherance of such conspiracy. If this court has determined that the rule announced in the case of *In re Henry* applies to Section 215 we are not aware of any such decision. So far as counsel for the plaintiff in error are concerned this is a new question arising under another statute and we do not think that the constitutional objection to this statute, raised in good faith for the purpose of interpretation which directly affects and involves the personal liberty of a citizen should be denounced as frivolous. We commend to the court the opinion of Mr. Justice Field in the case of *O'Neil v. Vermont*, 144 U. S. 337, 341, from which we quote his remarks concerning the scope of the Eighth Amendment to the Federal Constitution as follows:

"By the justice of the peace in Vermont, before whom the defendant was accused, he was convicted of 457 distinct offenses, and sentenced to pay to the treasurer of the state a fine of \$9140.00, and the costs of the prosecution, taxed at \$472.96, and to be confined at hard labor in the House of Correction for one month, and in case the fine should not be paid, to be confined there at hard labor for the further term of 28,836 days, to be computed from the expiration of the month's imprisonment. This was more than seventy-nine years for selling, and furnishing, and giving away, as alleged, intoxicating liquor. \* \* \* Had he been found guilty of burglary or highway robbery, he would have received less punishment than for the offenses for which he was convicted. It was six times as great as any court in Vermont could have imposed for manslaughter, forgery or perjury."

At this point we take leave to remark that the sentence in this case was five years in the penitentiary under each count; although the sentences were made to run concurrently, nevertheless the punishment was laid at five years under each count. This is more than twice as great a term in the penitentiary for mailing a single letter as would have been imposed under Section 37 for committing any number of overt acts in furtherance of a scheme or conspiracy to defraud the United States. In the aggregate it was a number of years longer than could have been imposed under any law of the State of Kansas relating to the obtaining of money or property under false pretenses.

Mr. Justice Field went on to say, with reference to the sentence imposed that, "It was one which, in its se-

verity, considering the offense of which he was convicted, may justly be termed both unusual and cruel;" and referred to the intention of the Constitution expressed in the Eighth Amendment, and says: "The inhibition is directed, not only against punishments of the character mentioned but against all punishments which by their excessive length or severity, are greatly disproportioned to the offenses charged. The whole inhibition is against that which is excessive, either in the bail required or the fine imposed, or punishment inflicted. Fifty-four years confinement at hard labor away from one's home and relatives, and thereby deprived from giving assistance to them or receiving comfort from them, is a punishment at the severity of which, considering the offense, it is hard to believe that any man of right feeling and heart can refrain from shuddering. It is no matter that by cumulative offenses for each of which imprisonment lawfully may be imposed for a short time, the period prescribed by the sentence was reached, the punishment was greatly beyond anything required by any human law for the offenses. The state may, indeed, make the drinking of one drop of liquor an offense to be punished by imprisonment, but it would be an unheard of cruelty if it should count the drops in a single glass and make thereof a thousand offenses, and thus extend the punishment for drinking a single glass of liquor to an imprisonment of almost indefinite duration \* \* \* It does not alter its character as cruel and unusual, that for each distinct offense there is a small punishment, if, when they are

brought together, and one punishment for the whole is inflicted, it becomes one of excessive severity."

When it is remembered that by the operation of this act, giving to it the interpretation contended for by the solicitor general, a person who, having devised a scheme or artifice which involves advertising, receives a thousand answers and takes them from the post office, Congress intended to place in the discretion of the United States judges the power to impose an imprisonment at hard labor long beyond the term of natural life. It would seem that Congress never intended such a result. The interpretation we contend for is that Congress intended to severely punish the use of the mails in aid of a scheme to defraud. That is, the general use of the mails or any use; considering each use of the post office establishment as an overt act in furtherance of the devise punishable as a conspiracy is punished. We are aware that this court has determined that the gravamen of the offense under the conspiracy section is the conspiracy but we think that this view was adopted as a matter of necessity as otherwise Section 5480 must have been declared unconstitutional.

#### IV.

We have pointed out the difference between the present section and Section 5480 as amended by the Act of March 2, 1889. There are considerations which we desire to present to this court by oral argument as well as by the printed brief which we merely outline in opposition

to the motion to dismiss, believing that the court readily will see that our constitutional objections to Section 215 are not frivolous.

The grant of power under which it is asserted Congress was authorized to enact Section 215 is found in Article 10 of the Constitution. The grant is to establish post offices and post roads. In this same section is found the grant of the power to regulate interstate and foreign commerce; also the power to grant patents to inventors; also the power to coin money, and regulate the value thereof; and also to establish the standard of weights and measures. Under well known rules of constitutional interpretation we are entitled to examine all of these grants for the purpose of ascertaining the meaning of any one of them. We suppose it will not be contended that the grant of power to establish post offices and post roads gives Congress any greater jurisdiction over the post office establishment than the grant of power to regulate interstate and foreign commerce gives it jurisdiction to legislate upon the subject of interstate and foreign commerce. It has been repeatedly said by this court that the power of regulating interstate and foreign commerce recognizes no limitation, except such as may be found in the Constitution itself. It has also declared that the word "commerce" includes "intercourse" and that interstate commerce may consist of intercourse between citizens of different states. It has said repeatedly that the power of Congress to regulate interstate commerce is the power to prescribe rules by

which such commerce shall be governed. It is understood that the power to establish post offices and post roads includes the power to prescribe rules under which the citizens shall use the post office establishment. We have, therefore, great similarity between these grants. We think also that the grant of power to establish a standard of weights and measures includes a grant to prescribe rules by which such weights and measures shall be governed; and the power to grant patents to inventors includes the power to prescribe rules by which the use of such patents shall be governed. In the light of these observations he who contends that the grant of power to establish post offices and post roads includes the power to punish a person who deposits a letter, innocent and innoxious of itself, in the post office establishment because such person deposits the letter for the purpose of executing a scheme or artifice to defraud would be driven to assert the power of Congress to enact statutes punishing any person who went upon an interstate carrier for the purpose of executing a scheme or artifice to defraud. Nor can those who assert the existence of this power stop at schemes or artifices to defraud. If the power exists and owns no limitations except the discretion of Congress, it extends to the punishment of a person, who having devised murder steps upon an interstate trolley car for the purpose of seeking his victim. It extends to the punishment of a person who uses money coined by the United States for the purpose of executing a scheme to defraud. It extends to

the punishment of a person who uses a patent for the purpose of executing such a scheme or artifice. If the argument is sustainable then under the grants contained in this article Congress may draw to itself practically the entire criminal jurisdiction which the Constitution seems to have left to the several states. We submit, therefore, that there are limitations to the power of Congress under the grant contained in this section. No one doubts the power of Congress to prevent the interstate carriage of articles which reasonably may be expected to be harmful to the public health, morals or safety. No one can object to Congress prohibiting the deposit in the mails of such articles. Doubtless this power extends to prohibiting obscene letters being deposited in the mails. But in each of these cases the thing itself is acted upon and those who attempt to use the interstate carriers or the post office establishment for such purposes are punished because their offense is against the health, morality and safety of the public. But Statutes like Section 215 do not operate upon the thing itself; that is, the letter, packet or package deposited, but upon the person in the sense that such person has devised the commission of the offenses against the laws of one of the states. If this is within the power granted by any of the provisions of this section no reason is perceived why a general statute undertaking to punish any person who has offended against the laws of any of the states for using the mails for any purpose which directly or indirectly tends to carry out the criminal offense.



For convenience let us set forth the original Section 5480. It reads as follows:

"If any person having devised or intending to devise any scheme or artifice to defraud, or to sell, dispose of, loan, exchange, alter, give away, or distribute, supply, or furnish, or procure for unlawful use any counterfeit or spurious coin, bank notes, paper money, or any obligation or security of the United States or of any State, Territory, municipality, company, corporation, or person, or anything represented to be or intimated or held out to be such counterfeit or spurious articles, or any scheme or artifice to obtain money by or through correspondence, by what is commonly called the 'sawdust swindle' or 'counterfeit money fraud,' or by dealing or pretending to deal in what is commonly called 'green articles,' 'green coin,' 'bills,' 'paper goods,' 'spurious Treasury notes,' 'United States goods,' 'green cigars,' or any other names or terms intended to be understood as relating to such counterfeit or spurious articles to be effected by either opening or intending to open correspondence or communication with any person, whether resident within or outside the United States, by means of the Post-Office Establishment of the United States, or by inciting such other person or any person to open communication with the person so devising or intending, shall in and for executing such scheme or artifice or attempting so to do, place or cause to be placed, any letter, packet, writing, circular, pamphlet, or advertisement in any post-office, branch post-office, or street or hotel letter-box of the United States, to be sent or delivered by the said post-office establishment, or shall take or receive any such therefrom, such person so misusing the post-office establishment shall, upon conviction, be punishable by a fine of not more than five hun-

dred dollars and by imprisonment for not more than eighteen months, or by both such punishments, at the discretion of the court. The indictment information, or complaint may severally charge offenses to the number of three when committed within the same six calendar months; but the court thereupon shall give a single sentence, and shall proportion the punishment especially to the degree in which the abuse of the post-office establishment enters as an instrument into such fraudulent scheme and device."

This section was amended and now appears as Section 215 of the Criminal Code and reads as follows:

"Whoever, having devised or intending to devise any scheme or artifice to defraud, or for obtaining money or property by means of false or fraudulent pretenses, representations, or promises, or to sell, dispose of, loan, exchange, alter, give away, distribute, supply or furnish or procure for unlawful use any counterfeit or spurious coin, bank note, paper money, or any obligation or security of the United States, or of any state, territory, municipality, company, corporation or person, or anything represented to be or intimated or held out to be such counterfeit or spurious article, or any scheme, or artifice to obtain money by or through correspondence, by what is commonly called the 'saw-dust swindle' or counterfeit money fraud' or by dealing or pretending to deal in what is commonly called 'green articles,' 'green coin,' 'green goods,' 'bills,' 'paper goods,' 'spurious Treasury notes,' 'United States goods,' 'green cigars' or any other names or terms intended to be understood as relating to such counterfeit or spurious articles, shall, for the purpose of executing such

scheme or artifice or attempting so to do, place, or cause to be placed, any letter, postal card, package, writing, circular, pamphlet, or advertisement, whether addressed to any person residing within or outside of the United States, in any postoffice, or station thereof, or street or other letter box of the United States, or authorized depository for mail matter, to be sent or delivered by the post-office establishment of the United States, or shall take or receive any such therefrom, whether mailed within or without the United States, or shall knowingly cause to be delivered by mail according to the direction thereon, or at the place at which it is directed to be delivered by the person to whom it is addressed, any such letter, postal card, package, writing, circular, pamphlet or advertisement, shall be fined not more than one thousand dollars, or imprisoned not more than five years, or both."

This section 215 changed Section 5480 in that it entirely eliminated the provision found in section 5480 which reads as follows:

**"To be effected by either opening or intending to open correspondence or communication with any person, whether resident within or outside of the United States, by means of the Post Office Establishment of the United States, or by inciting such other person or persons to open communication with the person so devising or intending."**

And also eliminated from section 5480 the following provision:

**"The indictment, information, or complaint may severally charge offenses to the number of**

three when committed within the same six calendar months; but the court thereupon shall give a single sentence and shall proportion the punishment especially to the degree in which the abuse of the Post Office Establishment enters as an instrument into such fraudulent scheme and device."

So that as section 215 upon which this indictment is predicated undertakes for the first time in the history of the criminal code to make it a crime if anyone should devise a scheme to defraud and afterward use the postoffice in sending a clean communication, even though at the time he devised the scheme to defraud, he did not intend to use the post office at all. That is to say, in other words, that even though the person did not when he concocted the scheme, intend to use the post office facilities, yet, the subsequent use of the post office by a communication innocent in itself, brings the original scheme for punishment within the reach of the constitutional power of Congress. We earnestly contend that such a statute is beyond the power of Congress and goes beyond any effort ever heretofore attempted by statute and beyond the limitations which we think this court has already laid down, and we ask this court to allow us at least to attempt to demonstrate our position. A research of all the cases justifies us in now asserting that no decision of this court exists or can be found which sustains this departure which for the first time appears in section 215, and that this court has not at any time considered this constitutional

question under that section. On the contrary, we feel that the court has laid down the limitations of the congressional power in previous cases which, unless now departed from, must result in a holding that this section 215 is beyond the power of Congress, and with equal confidence we assert that neither has the interesting question for the first time presented under this section, that it permits cruel and unusual punishment in violation of the Constitution, been before or decided by this court.

We may be pardoned for further suggesting at this stage of the matter that the evidence on the trial of this case did not show, and it will not be contended by the Government that it showed, or that there was any attempt to contend from the evidence that the accused, even though it be conceded he evolved a scheme (which we deny) intended as a part of it to ever use the United States mails, and that the most that he did was to subsequently correspond with his creditors in reference to the payment of his debts, extensions of time, and the means of obtaining funds.

Yet we are advised that these important and serious challenges of the power of Congress in now going as far as it has, is to be characterized as frivolous.

We sincerely trust that the administration of the law shall not have reached the point where new and serious constitutional questions honestly presented, are to be waived aside in the interest of expedition, or sacrificed on the altar of convenience.

We respectfully, therefore, ask that not only shall the motion to dismiss be overruled, but that the cause be allowed to take its regular course upon the docket to the end that the accused may have the opportunity of presenting in proper form the discussion of the questions involved herein, as well as the many other interesting ones not now presented, and thus afforded time to prepare its abstract and argument in orderly manner.

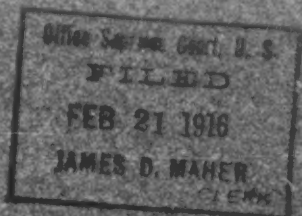
Respectfully submitted,

D. R. HITE,  
JAS. H. HARKLESS,  
CLIFFORD HISED,

*Attorneys for Plaintiff in Error.*

December 13th, 1915.





No. 521.

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*In the Supreme Court of the United States.*

OCTOBER TERM, 1915.

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GEORGE S. BADDERS, PLAINTIFF IN ERROR,

v.

THE UNITED STATES.

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IN ERROR TO THE DISTRICT COURT OF THE UNITED STATES FOR THE  
DISTRICT OF KANSAS.

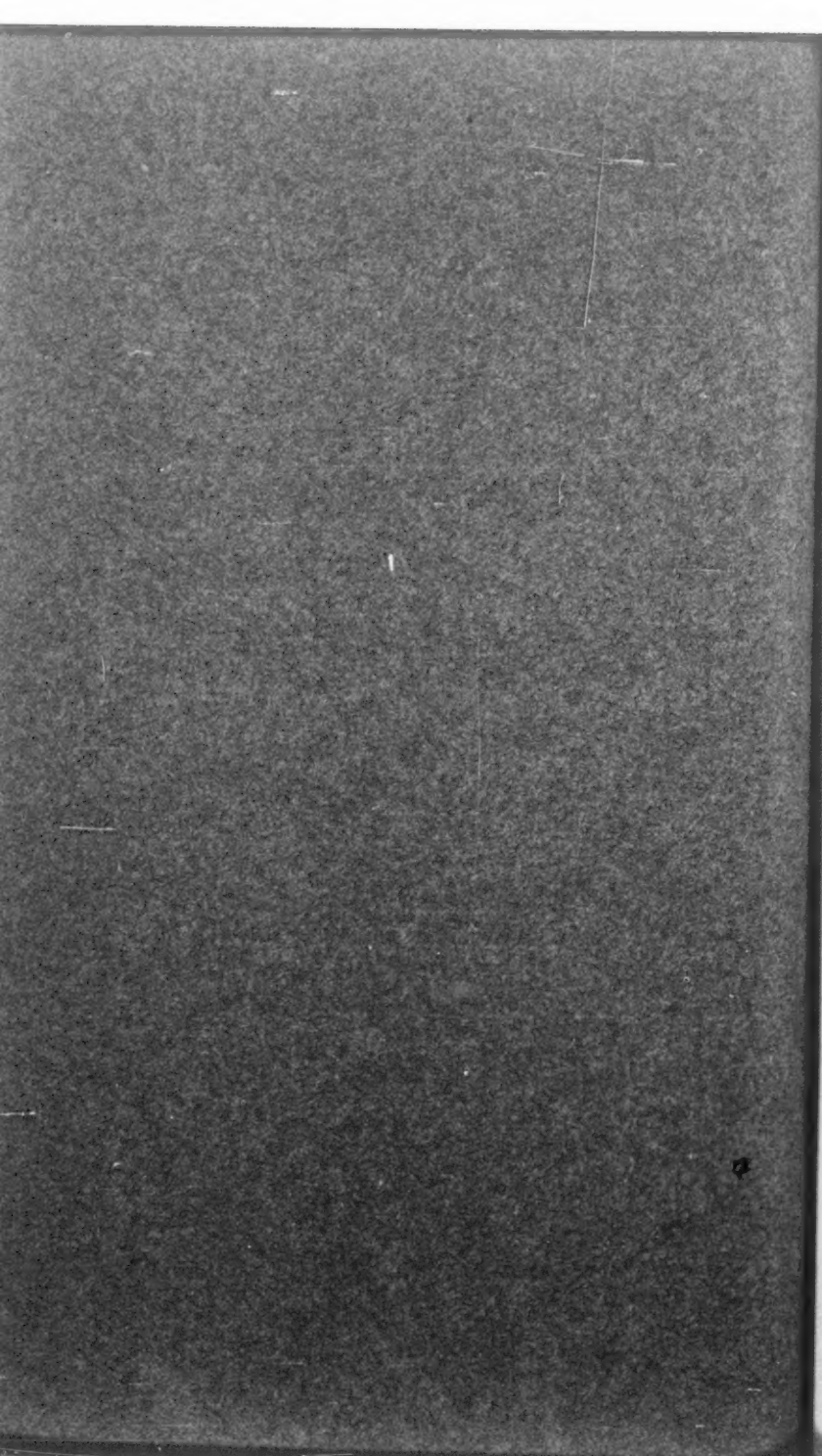
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BRIEF FOR THE UNITED STATES.

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WASH: GOVERNMENT PRINTING OFFICE: 1915





# In the Supreme Court of the United States.

OCTOBER TERM, 1915.

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GEORGE S. BADDERS, PLAINTIFF IN ERROR,	} No. 521.
v.	
THE UNITED STATES.	

---

*IN ERROR TO THE DISTRICT COURT OF THE UNITED STATES  
FOR THE DISTRICT OF KANSAS.*

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## BRIEF FOR THE UNITED STATES.

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### STATEMENT.

The plaintiff in error (hereinafter called the defendant) seeks to prosecute this writ directly to the district court, under section 238 of the Judicial Code, on the ground that substantial constitutional questions are involved.

The Government moved to dismiss the writ, or place the cause on the summary docket, on the ground that the questions presented were lacking in merit. This court thereupon placed the cause on the summary docket.

Defendant was convicted upon an indictment charging him with using the mails in the execution of a scheme to defraud, in violation of section 215 of the Criminal Code. The indictment contained 12 counts (R. 2-24).

The jury, by direction, returned a verdict of not guilty on counts numbered 1, 7, 8, 10, and 12 (R. 118). Separate verdicts of guilty were returned on each of the remaining seven counts (R. 119-123). Thereupon the court imposed sentence of five years' imprisonment and \$1,000 fine on each count—the prison sentences to run concurrently (R. 128).

#### BILLS OF EXCEPTION.

There are two bills of exception: The first dealing with proceedings on a motion to quash the indictment (R. 50-66); the second with the proceedings during the trial (R. 150-873), both comprising over 700 pages of printed matter. The assurance given on page 4 of defendant's brief in opposition, that counsel would prepare and submit to the Government an abstract of the evidence and exhibits, so as to shorten the printed record, has not been complied with.

#### ASSIGNMENTS OF ERROR.

The 88 assignments cover 20 printed pages (R. 130-149). It is difficult to classify them so as to concisely present the points urged; but it is believed the following is a fair summary:

##### I.

The indictment is insufficient because:

(a) it fails to charge a violation of section 215, *supra*, or any other public offense (assignments 1, 2, 58, 59, 60, R. 130-131-141) and fails to sufficiently advise defendant as to which of several offenses he is claimed to have committed (assignment 8, R. 131);

(b) it is duplicitous—section 215 not authorizing joinder of more than one offense in an indictment (assignment 7, R. 131; and 11, R. 132);

(c) it was not returned by the grand jury in open court (assignment 6, R. 131);

(d) the grand jury had not been sworn according to law (assignment 5, R. 131);

(e) the defendant was not accorded a preliminary hearing (assignment 9, R. 131–132); and

(f) the district judge was absent from the district during the deliberations of the grand jury (assignment 4, R. 131).

## II.

The proceedings were void because not in conformity with the laws of Kansas (assignment 10, R. 132).

## III.

The defendant was not properly arraigned (assignment 18, R. 133).

## IV.

The lower court erred:

(a) in not compelling the Government to elect whether it would show that defendant had deposited, or whether he had merely caused to be deposited the letters set out in the respective counts (assignment 3, R. 131);

(b) in denying defendant's motion for a bill of particulars (assignment 15, R. 133);

(c) in denying defendant's petition for a postponement of trial (assignment 16, R. 133);

(d) in denying defendant's motion for a continuance filed during the trial (assignment 17, R. 133);

(e) in admitting certain testimony over defendant's objection (assignments 19 to 25, inclusive, 28 to 37, inclusive, and 40, R. 133-134-135 to 137 and 138); or to allow him full cross-examination of the Government's witnesses (assignments 26, 27, 3<sup>a</sup>, 41, R. 135-138); or to interrogate them as to their testimony before the grand jury (assignment 38, R. 138);

(f) in refusing to instruct the jury as requested by the defendant (assignments 60A to 60X, inclusive, R. 141-149); in refusing to direct a verdict for insufficiency of the evidence on counts 2, 3, 4, 5, 6, 9 and 11 (assignments 42 to 48, inclusive, and 51 to 57, inclusive, R. 138-139, 140, 141).

## V.

Section 215, *supra*, is unconstitutional:

(a) as attempting to punish merely for defrauding or attempting to defraud another (assignments 12, 13, 62, R. 132, 148-149);

(b) as providing for the infliction of cruel and unusual punishments (assignment 14, R. 132);

(c) as depriving the citizen of liberty without due process of law (assignment 50, R. 140).

## VI.

Because of the directed verdict on the five counts, *supra*, the defendant was entitled to similar direction as to the remaining seven (assignments 49, 61 and 63, R. 139-140, 148, 149, 125-127).

## ARGUMENT.

## I.

The indictment is sufficient in law.

(A) This court has said in *United States v. Young*, 232 U. S. 155, 161, that the elements of the offense are—

. . . (a) a scheme devised or intended to be devised to defraud, or for obtaining money or property by means of false pretenses, and, (b) for the purpose of executing such scheme or attempting to do so, the placing of any letter in any post office of the United States to be sent or delivered by the Post Office Establishment.

The first count sets forth in detail the scheme which the defendant had devised, and the remaining counts contain it by reference. Save for the latter feature the counts are all alike.

The scheme charged was, in substance, that the defendant should falsely and fraudulently represent to persons named, and to others, that the Badgers Clothing Co. was a solvent going concern with large assets, and able to pay for all goods which defendant, as its president, might order; that defendant should so order in the name of said company large quantities of goods and should thereafter dispose of the same for cash without paying therefor, and without ever having intended to pay therefor; but intending always to obtain said goods and sell them for cash, and to fraudulently convert said cash to his

own use and to, by said means, cheat and defraud said sellers of the goods so ordered. After alleging the falsity of the representations so to be made, and made by the defendant, and his knowledge thereof, it is then averred:

--that, for the purpose of promoting and carrying on, and executing said scheme and artifice to defraud, and in attempting so to do, the defendant did \* \* \* unlawfully, wilfully and feloniously place, and cause to be placed, in the post office establishment of the United States \* \* \* a certain letter—etc.

How could the scheme, the intent, or the placing of the letter be set forth so as to more plainly advise the defendant of the crime with which he was charged? The offense is using the mails for promoting a scheme to defraud. Actual defrauding is no element of the offense—indeed, the defrauding may never have been accomplished.

If it be urged that the scheme, as averred, does not appear to be a fraudulent one, while yet insisting that it does, we may also answer that it is not at all necessary that the scheme should be fraudulent on its face; and further that a plan to wilfully make false promises or assurances is as much within reach of the statute as is a plan to wilfully misrepresent existing facts. *United States v. Stever*, 222 U. S. 167, 173; *Brooks v. United States*, 146 Fed. 223, 227; *United States v. Young*, 215 Fed. 267, 269.

Section 215, *supra*, is not limited to the class of schemes specifically enumerated therein. It applies

also to "any scheme or artifice to defraud;" and this indictment responds to every requirement of the section. *United States v. Young, supra*. Such a scheme as is here averred has been held to come within the purview of its predecessor section (5480, R. S.). *United States v. Wooten*, 29 Fed. 702, 705; *United States v. Watson*, 35 Fed. 358, 359, note; *Bettman v. United States*, 224 Fed. 819, 826; certiorari denied, 239 U. S. 642.

(B) *The indictment is not duplicitous.*

Duplicity is the joinder of two or more offenses in the same count. This does not appear in the respective counts of the indictment herein involved, it being obvious at a glance that each count charges a separate offense, to wit, the depositing of a different letter in the mails.

These offenses having arisen out of the same transaction and being of the same character, they were properly joined in separate counts. Section 1024, R. S., provides:

When there are several charges against any person for the same act or transaction, or for two or more acts or transactions connected together, or for two or more acts or transactions of the same class of crimes or offenses, which may properly be joined, instead of having several indictments the whole may be joined in one indictment in separate counts; and if two or more indictments are found in such cases, the court may order them to be consolidated.



See *United States v. Ridgway*, 199 Fed. 286, 289, 290; *Gardes v. United States*, 87 Fed. 172, 175; *Emanuel v. United States*, 196 Fed. 317, 320.

(C and D.) *The record shows that the grand jury was duly sworn and that the indictment was regularly returned in open court.*

Where an indictment has been regularly returned in open court the presumption, in the absence of a contrary showing, is that the grand jury, the several court officials, and the court all properly discharged their respective duties. *Carlise v. United States*, 194 Fed. 827, 829.

The defendant's contention is that the members of the grand jury were not duly sworn, *not* that they were not summoned and drawn according to law. The testimony of Albaugh, clerk of the court, given on the hearing of the motion to quash, shows that he personally swore the members of that body (R. 55-56); and that the indictment was properly returned in open court, is established by the same witness (R. 57-58), as well as by the testimony of Assistant United States Attorney Brady (R. 59).

While it appears from his testimony that the grand jury was not polled when the indictment was returned (R. 60), this defect can not be said to have worked any substantial injury to the defendant, and is cured by the provisions of section 1025, R. S. *Breese v. United States*, 226 U. S. 1, 11. In *Renigar v. United States*, 172 Fed. 646, cited by defendant, the indictment was delivered by the foreman alone and to the clerk when the court was not in session,

and in *People v. Rotole*, 115 N. Y. Sup. 854, also cited, the entire action seems to have been taken during a court recess of three weeks. In this case every action was taken while court was in session, save only the examination of a few of the witnesses. (R. 54, 57, 58).

(E) *Where an indictment has been regularly returned the accused is not entitled to a preliminary examination. Were the rule otherwise such examination may be, and was, waived by him.*

The defendant was originally arrested on an information and waived a preliminary examination. (R. 39.) He thereby waived the objection. Furthermore, a defendant is not entitled as of right to a preliminary examination. *United States v. Kerr*, 159 Fed. 185, 186.

(F) *The judge's absence during the deliberations of the grand jury is not prejudicial.*

Whatever the ancient rule, it is now settled that if the members of the grand jury have been summoned and sworn to perform their duties, the fact that they examine witnesses during the absence of the presiding judge is neither prejudicial nor reversible error. *Jones v. United States*, 162 Fed. 417, 421—certiorari denied, 212 U. S. 576; *Commonwealth v. Bannon*, 97 Mass. 214, 220; *Nealon v. People*, 39 Ill. App. 481, 483; *People v. Sheriff*, 11 N. Y. Civ Proc. 172, 184, 185.

## II.

Criminal prosecutions in the Federal courts are governed by Federal and not by State statutes.

Argument in support of this point is unnecessary. It is settled law. *United States v. Reid*, 12 How. 360, 366; *Bucher v. Chesire Railroad Co.*, 125 U. S. 555, 582; *Jones v. United States*, 162 Fed. 417, and cases cited.

## III.

The record shows defendant was properly arraigned.

The journal entry made January 21, 1915, shows that defendant was arraigned and declined to plead; whereupon, pursuant to section 1032, R. S., a plea of not guilty was entered in his behalf by the court. (R. 88.) The bill of exceptions also shows that he was arraigned and asked to plead *before the jury were sworn*.

In his brief in opposition to motion to dismiss, defendant relies upon the case of *Crain v. United States*, 162 U. S. 625. In the *Crain* case the record did not affirmatively show that the defendant had been arraigned at all. Moreover, upon this point, it has been overruled by this court in the case of *Garland v. Washington*, 232 U. S. 642, 647. The objection was always purely technical, and is cured by a statute providing that there shall be no reversal for any defect which does not tend to prejudice the substantial rights of the accused. *State v. O'Kelly* (Mo.), 52 L. R. A. (N. S.) 1063, 1074.

## IV.

Denial of an application for a bill of particulars, a motion to postpone, or a motion for a continuance are not subject to review unless there has been a flagrant abuse of discretion. No such abuse is shown.

An application for a bill of particulars is addressed to the discretion of the court and its action thereon is not subject to review. *Dunlop v. United States*, 165 U. S. 486, 491, and cases cited.

The same is equally true as to motions for continuance unless it clearly appears that there has been an abuse of discretion by the trial court. *Hardy v. United States*, 186 U. S. 224; *Isaacs v. United States*, 159 U. S. 487, 489, and cases cited. That there was no such abuse of discretion in the case at bar clearly appears from the record. In the motion for continuance, filed during the course of the trial (ground VIII, R. 94), it is stated, in effect, that if the trial proceeds and defendant is not given time to search for, and to endeavor to produce, certain evidence alleged to have been in the hands of witness Clark (who was receiver in a bankruptcy involving the Badders Clothing Company's affairs), he, defendant, would be forced to go upon the witness stand. This, he asserts, would violate his constitutional guaranty against being compelled to be a witness against himself. No attempt was made by either the Government or the court to compel defendant to go upon the witness stand, or to compel him to yield up any papers; while the counter affidavits filed on behalf

of the Government in opposition to this motion (R. 96-100) clearly establish that the other matters referred to in the motion were, and for a considerable period before had been, easily accessible to defendant but that he had made no effort to procure the same.

A résumé of the happenings between the time of defendant's original arrest and his trial is here appropriate. Complained of before a United States commissioner on March 18, 1914, he waived preliminary examination and gave bond for his appearance at the April, 1914, term. The indictment was returned at that term and the case continued to the October, 1914, term, when defendant filed his demurrers and other motions, all of which were then overruled, and the case again continued to the January, 1915, term, when he was placed on trial. Therefore defendant had from March, 1914, until January, 1915, to prepare his defense. This period of 10 months was ample for the purpose.

In opposition to the motion for a bill of particulars the United States attorney filed his affidavit showing that he had advised counsel for defendant about four months prior to the trial that if there was any "information of any sort" in the possession of the former which defendant's counsel desired, the same would be promptly and cheerfully furnished at any time. (R. 49.) Under these circumstances it might be fairly found that the effort to procure continuances was for the purpose of delaying the trial, and there was no abuse of discretion in denying these several motions.

(E) *The admission or exclusion of evidence over defendant's objection.*

These assignments merit no consideration for the reason that they do not quote the full substance of the evidence admitted or rejected, as required by the rules of this court, nor do they raise any Federal question. *Central Vermont Railway v. White*, 238 U. S. 507, 509.

(F) *Refusal to instruct the jury as requested by defendant.*

Assignments of Error 60A to 60X (R. 141-148) contain numerous instructions requested by defendant which were denied. But one (60M, R. 145) need be noticed. The court was requested to instruct the jury that each individual juror must be convinced of the guilt of defendant beyond a reasonable doubt before they should return a verdict of guilty against the defendant. Looking to the charge given (R. 743, 747-748), it will be noticed that the court not only instructed the jury to that effect, but charged exhaustively on "reasonable doubt," telling the jury at least five different times that they must be satisfied beyond a reasonable doubt before they should bring in a verdict of guilty.

## V.

**The alleged constitutional questions have no merit.**

The authorities cited in the brief accompanying the motion to dismiss (pp. 5-7) as supporting the constitutionality of section 215, might be largely supplemented.

The section sprang from section 5480 R. S., and the act of March 2, 1889 (c. 393, sec. 1, 25 Stat. 873), which in turn was based on the act of June 8, 1872 (c. 335, 17 Stat. 323). Traced thus to its genesis in 1872, it is to be noted that in no case in which one or the other of these sections has been before this court was its constitutionality ever questioned. See *Barrett v. United States*, 169 U. S. 218; *United States v. Young*, 232 U. S. 155; *Durland v. United States*, 161 U. S. 306; *In re De Bara*, 179 U. S. 316; *Streep v. United States*, 160 U. S. 128; *Stokes v. United States*, 157 U. S. 187; *In re Henry*, 123 U. S. 372; *United States v. Hess*, 124 U. S. 483.

In *United States v. Stever*, 222 U. S. 167, wherein the defendant was indicted under both the lottery section (3894) and the fraud-scheme section (5480) it was recognized that these two sections should be construed *in pari materia*. The constitutionality of the former section as a legitimate exercise of the postal power was declared in *Horner v. United States*, 143 U. S. 207, 213, and this power was said to comprehend the power to "refuse facilities for the distribution of matter deemed injurious by Congress to the public morals" in *In re Rapier*, 143 U. S. 110, 133.

The annual report of the Postmaster General for the year ending June 30, 1914 (H. Doc. No. 1387, 63d Cong., 3d sess., pp. 119-120), contains the following pertinent language:

The vigorous policy of the Postmaster General to prosecute fraudulent promoters of mail-

order schemes is best evidenced by the fact that during the year there were 762 arrests and 370 convictions on the charge of using the mails in furtherance of schemes to defraud, as compared with 510 arrests and 304 convictions on a similar charge for the previous fiscal year. Many important cases in which criminal action has been taken during the year have not yet been brought to trial. Previous to the enactment of the Penal Code (in effect January 1, 1910) these prosecutions were instituted under section 5480, Revised Statutes. Conforming to the provisions of this statute it was necessary to charge in the indictment and prove not only a scheme to defraud, but that such scheme was intended to be effected by means of the post-office establishment. A recent decision of the United States Supreme Court in the case of *Hardaway Young*, which was prosecuted under section 215 of the Penal Code, has greatly simplified prosecutions for this offense. Under this decision it is necessary only to show that a scheme has been devised or intended to be devised and that a letter has been placed in the post office for the purpose of executing such a scheme.

From reports submitted by inspectors covering cases in which arrests were made during the year it is estimated that the promoters of such fraud schemes obtained approximately \$68,000,000.

The obvious purpose of the statute is to protect the unsuspecting public from approach by promoters of fraudulent schemes through use of the mails.



The mere statement of its purpose should be sufficient to sustain its constitutionality.

The assertion that the punishment imposed *upon defendant* in this case is "cruel and unusual" disregards the issue. The question presented by the record is not was a cruel and unusual punishment inflicted upon *defendant*, but is section 215 void because it prescribes a cruel and unusual punishment. The section—not the defendant—is the subject of the challenge. The sentences imposed were to run concurrently, not cumulatively. But because the deposit of each letter in the mail is a separate and distinct offense, had the sentences run consecutively, or had a single sentence for the entire cumulative period been imposed, they would not have been illegal. See *Ebeling v. Morgan*, 237 U. S. 625, 631; *Carter v. McClaughry*, 183 U. S. 365, 394.

In his brief in opposition (pp. 23–25) defendant relies solely on a *dissenting* opinion in *O'Neil v. Vermont*, 144 U. S. 341. The majority opinion says the question was not before the court.

In asserting that defendant was twice placed in jeopardy (assignments, 49, 61, 63—R. 139, 140, 148, 149) defendant really contends that, because the scheme to defraud was set out in detail in the first count and by reference only in the remaining counts, the court having directed a verdict of not guilty as to the first count, it was thereby eliminated, the reference made meaningless and a verdict of not guilty as to all was demanded. If such be the real contention, it finds ample answer in the case of *Crain*

v. *United States*, 162 U. S. 625, 650, wherein this court said (p. 633):

One count may refer to the matter in a previous count so as to avoid unnecessary repetition; and if the previous count be defective or is rejected, that circumstance will not vitiate the remaining counts, if the reference be sufficiently full to incorporate the matter going before with that in the count in which the reference is made. *Blitz v. United States*, 153 U. S. 308, 317.

These requirements are met in the case at bar.

CONCLUSION.

It is respectfully submitted that the judgment of the court below should be affirmed.

WM. WALLACE, JR.,  
*Assistant Attorney General.*

FEBRUARY, 1916.





Office Supreme Court, U. S.

FILED

DEC 17 1915

JAMES O. BAKER

No. 521.

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*In the Supreme Court of the United States.*

OCTOBER TERM, 1915.

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GEORGE S. BADDERS, PLAINTIFF IN ERROR,

THE UNITED STATES,

---

IN ERROR TO THE DISTRICT COURT OF THE UNITED STATES FOR THE  
DISTRICT OF KANSAS.

---

MOTION BY THE UNITED STATES TO DISMISS OR TO PLACE  
ON THE SUMMARY DOCKET, AND BRIEF IN SUPPORT  
THEREOF.

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WASHINGTON: GOVERNMENT PRINTING OFFICE: 1914.



*In the Supreme Court of the United States.*

OCTOBER TERM, 1915.

GEORGE S. BADDERS, PLAINTIFF IN ERROR, }  
v. } No. 521.  
THE UNITED STATES.

IN ERROR TO THE DISTRICT COURT OF THE UNITED STATES  
FOR THE DISTRICT OF KANSAS.

**MOTION BY THE UNITED STATES TO DISMISS OR TO PLACE  
ON THE SUMMARY DOCKET, AND BRIEF IN SUPPORT  
THEREOF.**

Comes now the Solicitor General and moves the court to dismiss the above-entitled cause.

**STATEMENT.**

Plaintiff in error was convicted in the District Court of the United States for the District of Kansas, First Division, upon an indictment charging him with using the mails for the purpose of executing a scheme to defraud which he had theretofore devised, in violation of section 215 of the Criminal Code. The indictment contained 12 counts. As to five of these counts, the jury, under direction of the court, returned a verdict of not guilty. Separate verdicts of guilty were returned as to the re-

maing seven counts. Thereupon the court imposed a sentence of five years' imprisonment and a fine of \$1,000 on each count, the prison sentence to run concurrently, thus making a total sentence of five years in the penitentiary and \$7,000 fine. This writ of error was allowed on the 3d day of February, 1915, plaintiff in error having elected to come under section 238 of the Judicial Code directly to this court instead of to the Circuit Court of Appeals for the Eighth Circuit. Bond to operate as a supersedeas was fixed by the District Court in the penalty of \$10,000, and plaintiff in error is now at large.

We believe that for the purpose of this motion an inspection of the entire record is wholly unnecessary. Those portions which are regarded as material have been printed and are submitted herewith as Appendices.

The transcript of the record on file in the office of the clerk of this court contains some twelve hundred and twenty typewritten pages of pleadings, testimony, exhibits, etc.; in fact, the complete record of the entire trial in the District Court. It includes two bills of exceptions, the first having to do with proceedings on a motion to quash the indictment, and the second covering everything which transpired at the trial and containing some eight hundred typewritten pages. The assignments of error are eighty-eight in number and cover twenty-nine typewritten pages. It is submitted that both as to

the bills of exceptions and the assignments of error the record discloses a most striking violation of rules 4 and 35 of this court.

Omnibus bills of exception have received the condemnation of this court on more than one occasion. *Young v. Martin*, 8 Wall. 354; *Insurance Co. v. Sea*, 21 Wall. 158, 162; *Lincoln v. Claflin*, 7 Wall. 132, 136, 137; *Hanna v. Maas*, 122 U. S. 24, 27. See also: *Michigan Insurance Bank v. Eldred*, 143 U. S. 293, 299; while of the multiplication of assignments of error the court, speaking by Justice Lamar in *Central Vermont Railway v. White, Administratrix, etc.*, 238 U. S. 507, 516 said at p. 508:

the case was brought here on a record containing so many assignments, covering eighteen printed pages, as to make it proper to repeat the ruling in *Phillips v. Seymour*, 91 U. S. 648 that the "practice of filing a large number of assignments cannot be approved. It perverts the purpose sought to be subserved by the rule requiring any assignments." "It points to nothing and thwarts the purpose of the rule" (*Chicago Great Western Ry. Co. v. McDonough*, 161 Fed. 659) which was intended to present to the court a clear and concise statement of material points on which the plaintiff in error intends to rely.

#### THE ALLEGED CONSTITUTIONAL QUESTIONS.

The constitutional questions upon which the plaintiff in error relies to support the jurisdiction of this court are set forth in assignments of



error 12, 13, 14, 50, and 62, to which perhaps should be added Nos. 61 and 63, which may be said by liberal construction to embody constitutional grounds sought to be raised by the motion in arrest of judgment. For the convenience of the court these assignments of error are also printed as part of the Appendices to this motion. The other assignments relate to errors alleged to have occurred during the progress of the trial, but are not material to the purpose of this motion, and therefore the printing of the same herein is not deemed essential.

In substance, these assignments present the following propositions:

1. That section 215 of the Criminal Code is unconstitutional and void as being an effort on the part of Congress to inflict punishment upon a citizen merely for defrauding another or attempting so to do.
2. That section 215 of the Criminal Code violates the provision of the Constitution prohibiting the infliction of cruel and unusual punishments.
3. That section 215 violates that provision of the Constitution protecting the citizen against being deprived of his liberty without due process of law.
4. That the court having directed a verdict in favor of the plaintiff in error on counts 1, 7, 8, 10, and 12 because of insufficient evidence, plaintiff in error was thereupon entitled to a similar direction as to the remaining counts, and was placed twice in jeopardy by the refusal of the court so to direct.

It is submitted that all the alleged constitutional questions presented are so frivolous and so wholly wanting in merit that this court should decline to take jurisdiction of the cause. *Brolan v. United States*, 236 U. S. 216, 222.

#### ARGUMENT.

##### I.

Section 215 of the Criminal Code punishes not the offense of defrauding or attempting to defraud, but the use of the mails in furtherance of such a scheme. As such it is within the well-recognized field of constitutional authority.

There can be no substantial difference between the power of Congress to punish the use of the mails for the purpose of promoting a scheme or artifice to defraud and the power of Congress to prescribe what should be carried in the mails and what should be excluded therefrom. All of its powers in this regard essentially are derived from that provision of the Constitution granting to Congress the power to establish post offices and post roads. It is well settled that the power vested in Congress to establish post offices and post roads authorizes all measures necessary to secure the safe and speedy transmission of the mails and a prompt delivery of their contents, as well as the power to prescribe what should be carried and what should be excluded. *Ex parte Jackson*, 96 U. S. 727; *In re Rapier*, 143 U. S. 110, 134; *Public*

*Clearing House v. Coyne*, 194 U. S. 497, 506; *Burton v. United States*, 202 U. S. 344, 371. See also: *United States v. Loring*, 91 Fed. 881, 882; *Lottery Case*, 188 U. S. 321.

## II.

**The punishment denounced by section 215 is neither cruel nor unusual.**

The contention of the plaintiff in error in this regard appears to be that if the maximum punishment were denounced for a sufficient number of offenses, imprisonment might become perpetual, and the fine beyond all possibility of payment. A similar argument, of course, could be made against every criminal statute ever enacted. It is quite possible for the persistent criminal to sin away all of his liberty as well as all of his means, and in such case he has only himself to blame.

As said by this court in *In re Henry*, 123 U. S. 372, 374, in discussing section 5480 of the Revised Statutes, predecessor of the present section:

As was well said by the district judge on the trial of the indictment, "the act forbids, not the general use of the post-office for the purposes of carrying out a fraudulent scheme or device, but the putting in the post-office of a letter or packet, or the taking out of a letter or packet from the post-office in furtherance of such a scheme. *Each letter so taken out or put in constitutes a separate and distinct violation of the act.*" [Italics ours.]

See also: *In re De Bara*, 179 U. S. 316, 322; *Durland v. United States*, 161 U. S. 306, 315; *Howard v. Fleming*, 191 U. S. 126, 137; *Hanley v. United States*, 127 Fed. 929, 930; *Francis v. United States*, 152 Fed. 155, 157; *Hall v. United States*, 152 Fed. 420, 422; *United States v. McVickar et al.*, 164 Fed. 894, 897; *Rinker v. United States*, 151 Fed. 755, 760; *Jackson v. United States*, 102 Fed. 473, 487-488.

### III.

**Section 215 does not deprive the accused of his liberty without due process of law.**

It is difficult to imagine, in the absence of express statement, the ground upon which this claim is predicated. It is certainly too late to assert that to debar one from use of the mails for the promotion of a fraudulent scheme deprives him of either liberty or property without due process of law. See: *Missouri Drug Co. v. Wyman*, 129 Fed. 623, 630; *In re Rapier*, *supra*.

### IV.

**The claim of double jeopardy is equally frivolous.**

As stated above, the indictment contained twelve counts. The District Court found the evidence insufficient as to five of these counts and directed a verdict of not guilty. It is now soberly asserted by the motion in arrest of judgment, and the assignment of error supporting the same, that this ruling

entitled the plaintiff in error to an acquittal on the remaining counts; and that the failure of the court to so direct amounted to double jeopardy. To state the proposition is to answer <sup>it</sup>. It should be noted, moreover, that after the court had overruled plaintiff in error's demurrer to the evidence on the remaining seven counts he proceeded to introduce testimony and went to the jury thereon. By so doing he waived any supposed error in the ruling of the lower court, and any exception taken to the ruling of that court does not avail here. *McCabe & Steen Co. v. Wilson*, 209 U. S. 275, 276.

#### CONCLUSION.

The writ of error should be dismissed. If not dismissed, the case should be advanced and placed <sup>the</sup> on summary docket.

JOHN W. DAVIS,  
*Solicitor General.*

NOVEMBER, 1915.

## APPENDIX "A."

### INDICTMENT.

THE UNITED STATES OF AMERICA,

*The District of Kansas, First Division, ss:*

Sec. 215, Penal Code, 1910.

In the District Court of the United States in and for the District aforesaid, at the April Term thereof, A. D. 1914.

The Grand Jurors of the United States, within and for the First Division of the District of Kansas, at Topeka, duly impanelled, sworn and charged at the term aforesaid, of the court aforesaid, on their oath present, that one George S. Badders, on or about the 28th day of November, A. D. 1913, in the said division of said district, then and there being, did then and there and theretofore unlawfully, knowingly, fraudulently, designedly and feloniously devise a scheme and artifice to defraud many and various persons, partnerships, firms and corporations, residents of the United States, to wit:

Spero, Michael & Son, a corporation duly organized, incorporated and existing under the laws of the State of New York, in the City of New York; Cohen & Lang, a corporation, duly organized, incorporated and doing business under the laws of the State of New York, in New York City; Lipps Bros., a partnership firm consisting of Philip Lipps, Charles Leon Lipps, and Bernard H. Lipps,

doing business under the firm name and style of Lipps Bros., of New York City, New York; H. Kamber, of New York City, New York, doing business under the name of H. Kamber & Company; Morris Glickman, of Philadelphia, Pennsylvania, doing business under the name of M. Glickman & Company; Cohen, Goldman & Company, a co-partnership consisting of Hyman Cohen, and William Goldman, of New York City, New York, doing business under the name and style of Cohen, Goldman & Company; Rosenwald & Weil, a corporation of Chicago, Illinois, duly incorporated and existing under the laws of the State of Illinois; The Ornstein & Rice Neckwear Company, of St. Louis, Missouri, a partnership, consisting of William Ornstein, B. E. Rice, Albert K. Baum, Nat K. Baum, and Charles A. Werlheimer, doing business under the name and style of The Ornstein & Rice Neckwear Company; Cluett, Peabody & Company, a corporation duly organized and incorporated under the laws of the State of New York, and through its branch office, doing business in Kansas City, Missouri; The M. C. Lilley & Company, a corporation duly organized and incorporated under the laws of the State of Ohio, of Columbus, Ohio; The Hartman Trunk Company, a corporation, duly organized and incorporated under the laws of the State of Wisconsin, and maintaining an office and place of business in the city of Chicago, Illinois; The Ely Walker Dry Goods Company, a corporation duly organized and incorporated under the laws of the State of Missouri, (a more complete and correct description of said persons, firms, partnerships and corporations is to these Grand Jurors unknown, and for that reason cannot be set out

herein), and many and various other firms and persons to these Grand Jurors unknown, of goods, wares, merchandise, and property of value, by means of various and numerous promises, representations, and false and fraudulent pretenses and promises, which said scheme and artifice to defraud was and is as follows, to wit:

That he, the aforesaid George S. Badders, who was then and there and at all the times herein mentioned interested in and a representative and officer of a certain corporation known as The Badders Clothing Company, of Topeka, Kansas, which is hereinafter referred to as The Badders Company, and said corporation, through and by said George S. Badders, used in its business the name of The Badders Company, which said company was then and there and at the times herein mentioned conducting a mercantile business, and that on or about the date herein mentioned, and theretofore, George S. Badders, planned, contrived and devised that he would and did represent, and pretend that said The Badders Company, of which he was the president, was a going concern, with large assets, and solvent, and able to pay for all goods ordered by him for it, and so received by it, and that said company was financially able and would be financially able to protect all of its creditors, and that it would do so; that the capital stock of said corporation, which had theretofore been in the amount of Thirty Five Thousand (\$35,000.00) Dollars, had been increased in the sum of Twenty Five Thousand (\$25,000.00) Dollars, making it then Sixty Thousand (\$60,000.00) Dollars; that said increase in capital stock had been fully subscribed and would be paid in full so as to be available for the payment of creditors on and



immediately after December 20th, 1913; that the said The Badders Company would be able to meet its debts and liabilities and pay them in full, that he had planned a sensational sale whereby he would sell, in the general course of business in said store, a large amount of goods, such as was furnished by the parties hereinbefore mentioned, for cash and by that means furnish a satisfactory explanation to said parties for the numerous large orders for goods which he would be making, and thereby cause and procure the merchants, firms and corporations hereinbefore mentioned and described to sell and deliver to the Badders Company, upon its credit, to be paid for in the future, large amounts of merchandise, consisting of clothing, men's furnishing goods, and various kinds of merchandise of the amount and value of many thousands of dollars, the exact amount of which is to these Grand Jurors unknown, and after having so obtained said goods, he, the said George S. Badders, would then sell and dispose of the same in part as a sensational sale, at a sacrifice, and for less than the retail price, if necessary, in order to dispose of said merchandise rapidly for cash; that he would sell some of said goods to various other merchants and business firms for less than the cost price, or the price agreed to be paid by him to the parties from whom he received the same.

And to evade paying therefor, he would and did have pretended meetings of the Board of Directors of the said The Badders Company, in which he had them vote and they did vote for and declare a dividend of twenty five per cent (25%) at one time and twenty five per cent (25%) at another: also have himself voted an increase in salary of Five Thousand (\$5,000.00) Dollars per annum, in addition to

his then salary of Sixty (\$60.00) Dollars per week, and twenty five per cent (25%) commission of Ten Thousand (\$10,000.00) Dollars increase of capital for selling said stock to himself, and that he would be paid fifteen per cent (15%) on all sales over \$50,000.00 per annum, and five per cent (5%) thereon to the Secretary, and do this regardless as to whether there were any profits in the business of the said company or not; he would ship some of the goods so received to other points and store them, and also take large amounts of valuable goods out of said store and have them removed from said place of business and dispose of them in various quantities to other merchants, and not sell them in the ordinary course of business, in the place of business occupied by The Badders Company, as he would have and cause those from whom he received the goods to believe he would; that as a part of his said scheme he would write letters to his many creditors whom he owed prior to the receiving and obtaining of the goods as aforesaid, telling them of the sensational sale he was making, and make statements to them of the additional subscription to the capital stock of The Badders Company, which he would and did in substance represent to them would be paid and available on and after December 20th, 1913, so that the creditors whom he already owed would extend to him credit and delay the enforcing of the collection of a large amount of debts already due from said The Badders Company, by which said delay he would have the time and opportunity to dispose of large quantities of merchandise for cash, and appropriate the proceeds thereof to his own personal use, to the fraud and injury of The Badders Company, and the many and various persons, firms, and corporations, among whom are those

hereinbefore named, from whom he would obtain the merchandise aforesaid; that it was a part of his said scheme that he would so order the merchandise aforesaid, as aforesaid, and dispose of it for cash, in the manner herein described, without paying for the same; that he, the said George S. Badders, then and there and at all the times herein mentioned, and at the various times he ordered the goods, and merchandise, from the various parties aforesaid, then and there unlawfully and feloniously designed and intended not to pay for the same, but to so order, obtain and convert said merchandise into money and appropriate said money to his own use for personal gain, and thereby cheat and defraud the parties hereinbefore mentioned, all as aforesaid.

And the Grand Jurors aforesaid, upon their oath aforesaid, do further present that it was not true that the said The Badders Company had large assets; that it was not true that said company was solvent and a going concern; that it was already owing large sums of money which it could not pay, and which the said George S. Badders did not intend that it should pay, and he had control of the business operations of the said The Badders Company; that he then and there knew that the Twenty Five Thousand (\$25,000.00) Dollar subscriptions was a pretended increase of capital stock in The Badders Clothing Company which would not be paid or ever become available for the payment of goods ordered by him for said company, and did not intend that it should be so paid on December 20th, 1913, or at any other time, and he, the said George S. Badders, then and there well knew that the pretenses, promises and statements so made by him as aforesaid, and so used by him were false

and untrue, all of which he, the said George S. Badders, unlawfully and feloniously did with intent then and there to cheat and defraud any and all persons whomsoever might be so induced as aforesaid to send to him and the said The Badders Clothing Company goods and merchandise so ordered by him under his said scheme and artifice to defraud.

And the Grand Jurors aforesaid, upon their oath aforesaid, do further find and present that within the jurisdiction aforesaid of the court aforesaid, for the purpose of promoting and carrying on and executing said scheme and artifice to defraud, and in attempting so to do, the aforesaid George S. Badders did then and there, and on or about the 28th day of November, A. D. 1913, with the intent as aforesaid, unlawfully and wilfully and feloniously, place and cause to be placed in the postoffice establishment of the United States, at Topeka, Kansas, in said division and district, the same being a part of the postoffice establishment of the United States, and an authorized depository for mail, a certain letter, to be sent and delivered by the post-office establishment of the United States, directed to Spero, Michael & Son, 836 Broadway, New York, a true copy of said letter being as follows, to wit:

"George S. Badders, *President*.

Seward R. Graham, *Sec. Treas.*

STEIN-BLOCH SMART CLOTHES.—THE BADDERS COMPANY, SEVENTH AND KANSAS AVENUE, TOPEKA, KANSAS.

*November 28th, Nineteen Hundred Thirteen.*

SPERO, MICHAEL & SON,

*836 Broadway, New York City.*

GENTLEMEN:—Your favor of the 25th is at hand. We wish you would consider this matter further and ship the goods as we need them. We unfor-

unately looked at goods at too many places and when we narrowed our purchasers to what we wanted all parties we had seen reported sales and this of course looked like we were buying a lot of goods. As a matter of fact we cancelled about \$12000.00 in clothing from our fall purchase and now find ourselves short. We bought from the following houses only in New York City (all others cancelled):

Cohen & Lang-----	\$862.50
Lipps Bros-----	1941.75
J. Cohen Sons Co-----	1873.50
Robert Kamber-----	1200.00
Nipson System-----	1200.00

All goods have been shipped with the possible exception of Nipson System, whose invoice we have not received. We can use your merchandise and for that reason did not cancel.

Will you not talk with Robert Kamber & Hoffman, J. Samuels & Bros. and call Stein-Bloch at Rochester on long distance if in any doubt as to our responsibility.

Yours very truly,

GSB-B. THE BADDERS COMPANY,  
By GEO. S. BADDERS."

Said letter then and there being enclosed in an envelope, sealed and stamped with a sufficient number of United States postage stamps to entitle it to be transmitted through said mail, and addressed to Spero, Michael & Son, 836 Broadway, New York; and this he, the said George S. Badders, did, contrary to the form of the statute in such case made and provided, and against the peace and dignity of the United States of America.

## SECOND COUNT.

And the Grand Jurors aforesaid, on their oath aforesaid, do further find and present that the said George S. Badders, on or about the 28th day of November, 1913, in the said division and district, and within the jurisdiction of said court, then and there being, did then and there and theretofore unlawfully, wilfully, knowingly, fraudulently and designedly, devise a scheme and artifice to defraud Cohen & Lang, a corporation duly organized, incorporated and existing and doing business under the laws of the State of New York, and many and various other persons, partnerships, firms, and corporations, residents of the United States, which said persons, firms, partnerships and corporations are fully set out in the first count of this indictment, and are hereby made a part of this count, the same as if fully rewritten herein, of money and property of value, by means of numerous representations and promises, and false and fraudulent pretenses and representations, which said scheme and artifice to cheat and defraud is fully set out in the first count of this indictment, and made a part of this count, the same as if fully rewritten and set out herein.

And the Grand Jurors aforesaid, upon their oaths aforesaid, do further find and present that within the jurisdiction aforesaid, of the court aforesaid, for the purpose of promoting, carrying on and executing said scheme and artifice to defraud, and in attempting so to do, the aforesaid George S. Badders did then and there, and on or about the 28th day of November, A. D. 1913, with

the intent as aforesaid, unlawfully and wilfully and feloniously place and cause to be placed in the postoffice establishment of the United States at Topeka, Kansas, in said division and district, the same being a part of the postoffice establishment of the United States, and an authorized depository for mail, a certain letter, to be sent and delivered by the postoffice establishment of the United States, directed to Cohen & Lang, 707 Broadway, New York, said Cohen & Lang being the corporation named and described in the first count of this indictment, a true copy of said letter being as follows, to wit:

(Copy.)

“George S. Badders, *President*.

Seward R. Graham, *Sec. Treas.*

STEIN-BLOCH SMART CLOTHES.—THE BADDERS COMPANY, SEVENTH AND KANSAS AVENUE, TOPEKA, KANSAS.

*November Twenty-eighth,  
Nineteen Hundred Thirteen.*

SPERO, MICHAEL & SON,

*New York City.*

GENTLEMEN:—Your favor of the 25th at hand. We wish you would consider this matter further and ship the goods as we need them. We unfortunately looked at goods at too many places and when we narrowed our purchases to what we wanted all parties we had seen reported sales and this of course looked like we were buying a lot of goods. As a matter of fact we cancelled about \$12000.00 in clothing from our fall purchases and now find ourselves short. We bought from the fol-

lowing houses only in New York City (all others were cancelled):

Cohen & Lang-----	\$862.50
Lipps Bros-----	1941.75
J. Cohen Sons Co-----	1873.50
Robert Kamber-----	1200.00
Nipson System-----	1200.00

All goods have been shipped with the possible exception of Nipson System, whose invoice we have not received. We can use your merchandise and for that reason did not cancel it.

Will you not talk with Robert Kamber & Hoffman, J. Samuels & Bros., and call Stein-Bloch at Rochester on long distance if in doubt as to our responsibility.

Yours very truly,

(Signed:) THE BADDERS COMPANY,  
GSB-B. By GEO. S. BADDERS.

GENTLEMEN: Above for your information.

THE BADDERS Co.,  
G. S. B."

Said letter being enclosed in an envelope, sealed and stamped with a two-cent (2¢) United States postage stamp, the same being sufficient postage to entitle said letter to transmission through the United States mails, and the address and superscription on said envelope being:

"The Badders Company,  
Seventh and Kansas Avenue,  
Topeka, Kansas.

Cohen & Lang,  
New York City.

707 Broadway."



And this he, the said George S. Badders, did contrary to the form of the statute in such case made and provided, and against the peace and dignity of the United States of America.

### THIRD COUNT.

And the Grand Jurors aforesaid, on their oath aforesaid, do further find and present that the said George S. Badders, on or about the 28th day of November, 1913, in the said division and district, and within the jurisdiction of said court, then and there being, did then and there and theretofore, unlawfully, wilfully, knowingly, fraudulently, and designedly devise a scheme and artifice to defraud Lipps Bros., a partnership firm consisting of Philip Lipps, Charles Leon Lipps, and Bernard H. Lipps, doing business under the firm name and style of Lipps Bros., of New York City, New York, and many and various other persons, partnerships, firms and corporations, residents of the United States, which said persons, partnerships, firms and corporations are fully set out in the first count of this indictment, and are hereby made a part of this count, the same as if fully rewritten herein, of money and property of value, by means of numerous representations and promises, and false and fraudulent pretenses and representations, which said scheme and artifice to cheat and defraud is fully set out in the first count in this indictment, and made a part of this count, the same as if fully rewritten and set out herein.

And the Grand Jurors aforesaid, upon their oaths aforesaid, do further find and present that within the jurisdiction aforesaid, of the court afore-

said, for the purpose of promoting, carrying on and executing said scheme and artifice to defraud, and in attempting so to do, the aforesaid George S. Badders did then and there, and on or about the 1st day of December, A. D. 1913, with the intent as aforesaid, unlawfully and wilfully and feloniously place and cause to be placed in the postoffice establishment of the United States, at Topeka, Kansas, in said division and district, the same being a part of the postoffice establishment of the United States, and an authorized depository for mail, a certain letter, to be sent and delivered by the post-office establishment of the United States, directed to Lipps Bros., 622 Broadway, New York City, said Lipps Bros., being the partnership named and described in the first count of this indictment, a true copy of said letter being as follows to wit:

**"George S. Badders,**                 **Seward R. Graham,**  
                    **President.**                         **Sec. Treas.**

STEIN-BLOCH SMART CLOTHES.—THE BADDERS COMPANY, SEVENTH AND KANSAS AVENUE, TOPEKA, KANSAS.

*December first, Nineteen Hundred Thirteen.*

LIPPS BROS.,

622 Broadway, New York City.

GENTLEMEN: Please send us at once by express thirty blue blue serge suits your No. 6883 in following sizes:

34	35	36	37	38	40
3	5	5	5	8	4

Yours very truly,

THE BADDERS COMPANY  
By GEORGE S. BADDERS."

Said letter then and there being enclosed in an envelope, sealed and stamped with a sufficient number of United States postage stamps to entitle it to be transmitted through said mail, and addressed to Lipps Bros., 622 Broadway, New York City, and this he, the said George S. Badders, did contrary to the form of the statute in such case made and provided, and against the peace and dignity of the United States of America.

The fourth count of the indictment is identical with the third count except that it charges that defendant devised the scheme for the purpose of defrauding H. Kamber, New York City, doing business as H. Kamber & Company, and alleges the placing and causing to be placed in the mail on or about December 2, 1913, of a letter addressed to said H. Kamber & Company, a copy of said letter, containing an order for goods, being set out in said count.

The same may be said as to the fifth count except that the person intended to be defrauded is named as Morris Glickman, of Philadelphia, Pennsylvania, doing business under the name of M. Glickman & Company, and a letter addressed to the latter containing an order for goods is alleged to have been mailed on or about December 2, 1913, a copy of said letter being set out in said count.

The same may be said as to the sixth count except that the firm intended to be defrauded is named as Cohen, Goldman & Company, of New York City, and a letter addressed to the latter containing an order for goods is alleged to have been mailed on or about December 4, 1913, a copy of said letter being set out in said count.

The same may be said as to the seventh count except that the firm intended to be defrauded is named as Rosenwald & Weil, of Chicago, Illinois, and a letter addressed to the latter containing an order for goods is alleged to have been mailed on or about December 6, 1913, a copy of said letter being set out in said count.

The same may be said as to the eighth count except that the firm intended to be defrauded is named as The Ornstein & Rice Neckwear Company, of St. Louis, Missouri, and a letter addressed to the latter containing an order for goods is alleged to have been mailed on or about December 6, 1913, a copy of said letter being set out in said indictment.

The same may be said as to the ninth count except that the firm intended to be defrauded is named as Cluett, Peabody & Co., a corporation of New York, through its office at Kansas City, Missouri, and a letter addressed to said company at its Kansas City office is alleged to have been mailed on or about December 8, 1913, a copy of said letter being set out in said indictment.

The same may be said as to the tenth count except that the firm intended to be defrauded is named as The M. C. Lilley & Company, of Columbus, Ohio, and a letter addressed to the latter containing an order for goods is alleged to have been mailed on or about December 11, 1913, a copy of said letter being set out in said indictment.

The same may be said as to the eleventh count except that the firm intended to be defrauded is named as The Hartman Trunk Company, a Wisconsin corporation maintaining an office in Chicago, Illinois, and a letter addressed to said company at its Chicago office containing an order for goods is

alleged to have been mailed on or about December 11, 1913, a copy of said letter being set out in said indictment.

The same may be said as to the twelfth count except that the firm intended to be defrauded is named as The Ely Walker Dry Goods Company, of St. Louis, Missouri, and a letter addressed to the latter containing an order for goods is alleged to have been mailed on or about December 29, 1913, a copy of said letter being set out in said count.

(List of witnesses endorsed on indictment omitted.)

## APPENDIX "B."

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JOURNAL ENTRY OF FEBRUARY 2, 1915.

THE UNITED STATES	}	No. 4160.
<i>vs.</i>		
GEORGE S. BADDERS.		

Now on this 2nd day of February, 1915, being one of the days of the regular January term, 1915, come the parties hereto, the defendant George S. Badders being present in his own proper person and by D. R. Hite and James H. Harkless, his attorneys; the plaintiff, the United States being present by Fred Robertson, U. S. Attorney and Francis M. Brady, Asst. U. S. Attorney.

\* \* \* \* \*

"and thereupon the defendant being inquired of by the court whether he had anything to say why the judgment of the court should not now be pronounced against him and the court having heard the statement of defendant in response thereto and being fully advised in the premises doth

Order and Adjudge, that the Defendant, George S. Badders, be imprisoned in the United States Penitentiary at Leavenworth, Kansas, for a period of five years on each of the second, third, fourth, fifth, sixth, ninth and eleventh counts of the indictment herein, and that he make his fine unto the United States of America in the sum of \$1,000.00

on each of the second, third, fourth, fifth, sixth, ninth and eleventh counts of the indictment herein, and that said period of five years as to each of the said counts of said indictment shall run concurrently and not cumulatively, so that the imprisonment of the said George S. Badders in the Federal Penitentiary shall be for a period of five years and no more and the total amount on account of said fines \$7,000.00, to which orders, rulings, and judgment of the court and to each and every part thereof of the said George S. Badders duly excepted and excepts."

## APPENDIX "C."

IN THE DISTRICT COURT OF THE UNITED STATES FOR  
THE DISTRICT OF KANSAS, FIRST DIVISION.

UNITED STATES OF AMERICA, PLAINTIFF,  
v.  
GEORGE S. BADDERS, DEFENDANT. } No. 4160.

### ASSIGNMENT OF ERRORS.

The defendant presents with his petition for a writ of error returnable to the United States Supreme Court, the following assignment of errors, upon which he will rely to maintain said writ, to-wit:

• • • • •

## 12.

Said court erred in sustaining the indictment herein as against defendant's demurrers and motions to quash; for that, said indictment attempts to charge the defendant with an offense or offenses under Section 215 of the Criminal Code, consisting in the alleged use of the United States mails as a means of defrauding persons of property, when it appears from said indictment, that the said means consisted of letters harmless in themselves, and the offense, if any, was in defrauding such persons, and the Congress of the United States is without constitutional power to punish



citizens for defrauding other citizens of their property; and the Congress has no power to make criminal the mere means by which such fraud, if any, may be accomplished, or attempted; and said Section in so far as it deals with the defrauding or attempting, or designing to defraud persons of their property, or money, and attempts to punish the same, is wholly unconstitutional and void, and said court should have held and determined that it had no jurisdiction to proceed against this defendant under or by virtue of said Section.

## 13.

That said court erred in holding and deciding that it is an offense cognizable by the courts of the United States for the defendant to use the post office establishment of the United States to fraudulently deprive the persons named in the indictment of property in the manner alleged in said indictment; for that, such use of the mails cannot be made an offense by act of Congress pursuant to any power conferred by the Constitution of the United States.

## 14.

Said court erred in sustaining said indictment; for that, said Section 215, under which said indictment was drawn violates that provision of the Constitution of the United States protecting citizens against cruel and unusual punishments.

\* \* \* \*

## 50.

Said court erred in refusing to instruct the jury to return a verdict of not guilty as to all of the counts in the indictment; for that, Section 215

of the Criminal Code under which said indictment is drawn, violates the constitutional right of the defendant that he shall not be deprived of his liberty without due process of law, such statute is not within the powers conferred upon Congress by said Constitution, and violates that provision of the said Constitution protecting the defendant against cruel and unusual punishments.

\* \* \* \* \*

61.

Said court erred in overruling defendant's motion in arrest of judgment as to the second, third, fourth, fifth, sixth, ninth and eleventh counts of the indictment; for that, it appears from the record that the plaintiff failed as to the first count of the indictment in other respects than as to the mailing of the alleged letter, and there being a failure of proof relative to the scheme or artifice as charged in the first count of said indictment, and the court having sustained a demurrer as to said first count, the plaintiff was concluded by the judgment of this court sustaining said demurrer as to the first count, from asserting the guilt of the defendant as to the other counts, and, upon the record a judgment based upon all the verdicts of the jury should be entered in favor of the defendant; and he be discharged.

62.

Said court erred in entering judgment as it did upon the verdicts of the jury; for that, it appears from the face of the record that the defendant has committed no offense cognizable under any law enacted by Congress within its Constitutional powers; for that, Section 215 of the Criminal Code in so far as it attempts to inflict punishment upon a citizen for defrauding another, or attempt-

ing to do so, is wholly unconstitutional and void, and said section, if constitutional, violates that provision of the Federal Constitution protecting the defendant against cruel and unusual punishment; that said Section violates that provision of the Federal Constitution protecting citizens against being deprived of their liberty except by due process of law, and said enactment contained in said section is not within the powers conferred by said Constitution upon Congress.

63.

Said court erred in overruling defendant's motion in arrest of judgment; for that, it appears by the record that defendant was found not guilty of having committed the offense charged in the first count of the indictment, and said Section 215 of the Criminal Code, if constitutional, and properly interpreted, does not confer upon this court the power to punish the defendant, as for a separate offense for each single letter deposited in the mail for the purpose of executing a single scheme or artifice of the kind or kinds set out in the indictment herein.

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dictment, trial and conviction of the defendant, is unconstitutional and void.

As interpreted by the trial court, § 215 encounters that provision of the Constitution which provides "that excessive bail shall not be required nor excessive fines imposed, nor cruel or unusual punishment inflicted."

Where the accused is held under a Federal indictment which does not substantially state an offence against the laws of the United States, he is deprived of his constitutional right to be informed of the charge against him.

The statement of facts in that part of the indictment attempting to charge a scheme or artifice is insufficient.

The indictment is fatally defective in that it does not state facts showing that the defendant devised any scheme or artifice; also because it does not charge an intent on the part of the defendant to use the post office establishment as a means to effect the alleged scheme or artifice.

The indictment is duplicitous in that it cannot be determined whether it charges the defendant with having devised a scheme or artifice to defraud, or a scheme or artifice for obtaining property by means of false or fraudulent pretences, representations or promises.

Plaintiff in error is held to answer for an infamous crime without an indictment of a grand jury found and presented as required by law.

Having directed an officer of the court to produce material documentary evidence in his possession, necessary for the defence, the court erred in refusing defendant time and opportunity to supply secondary evidence of the contents of such documents when the officer failed to produce them, claiming that they had disappeared.

The defendant was not arraigned as required by law.

The court's refusal to give the instructions requested by the defendant constitutes material and prejudicial error.

The evidence is insufficient to sustain verdicts of guilty as to any of the counts of the indictment.

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Opinion of the Court.

Numerous authorities, both state and Federal, support these contentions.

*Mr. Assistant Attorney General Wallace* for the United States.

MR. JUSTICE HOLMES delivered the opinion of the court.

This case is brought to this court from the District Court under § 238 of the Judicial Code, Act of March 3, 1911, c. 231; 36 Stat. 1087, 1157, on the ground that it involves the construction and application of the Constitution of the United States. The plaintiff in error was indicted for placing letters in the mail for the purpose of executing a scheme to defraud devised by him, in violation of § 215 of the Criminal Code, Act of March 4, 1909, c. 321; 35 Stat. 1088, 1130. There were twelve counts, on seven of which, each relating to a different letter, he was found guilty. He was sentenced to five years' imprisonment on each count, the periods being concurrent not cumulative, and also to a fine of \$1,000 on each, or \$7,000 in all. The grounds for coming to this court are first that § 215 of the Criminal Code is beyond the power of Congress as applied to what may be a mere incident of a fraudulent scheme that itself is outside the jurisdiction of Congress to deal with; and second that if it makes the deposit of each letter a separate offence subject to such punishment as it received in this case it imposes cruel and unusual punishment and excessive fines.

These contentions need no extended answer. The overt act of putting a letter into the postoffice of the United States is a matter that Congress may regulate. *Ex parte Jackson*, 96 U. S. 727. Whatever the limits to its power, it may forbid any such acts done in furtherance of a scheme that it regards as contrary to public policy, whether it can forbid the scheme or not. *In re Rapier*,

143 U. S. 110, 134. *Public Clearing House v. Coyne*, 194 U. S. 497, 507. *United States v. Stever*, 222 U. S. 167, 173. See *Lottery Case (Champion v. Ames)*, 188 U. S. 321, 357. *United States v. Holte*, 236 U. S. 140, 144. Intent may make an otherwise innocent act criminal, if it is a step in a plot. *Aikens v. Wisconsin*, 195 U. S. 194, 206. *Swift & Co. v. United States*, 196 U. S. 375, 396. The acts alleged have been found to have been done for the purpose of executing the scheme, and there would be no ground for contending, if it were argued, that they were too remotely connected with the scheme for the law to deal with them. The whole matter is disposed of by *United States v. Young*, 232 U. S. 155, 161. As to the other point, there is no doubt that the law may make each putting of a letter into the postoffice a separate offence. *Ebeling v. Morgan*, 237 U. S. 625. *In re Henry*, 123 U. S. 372, 374. And there is no ground for declaring the punishment unconstitutional. *Howard v. Fleming*, 191 U. S. 126, 135. *Ebeling v. Morgan*, *supra*.

The other matters discussed are before us only as incident to the constitutional questions upon which the case was brought here. As those questions merely attempt to reopen well established and familiar law it is not necessary to go beyond them. *Brolan v. United States*, 222 U. S. 215, 216, 222. There is the more reason for declining further consideration in the extravagant and unnecessary multiplication of exceptions and assignments of error that often has been condemned by this court. *Central Vermont Ry. v. White*, 238 U. S. 507, 509. If there were anything in the objections to the indictment they are not of a kind to involve constitutional rights, *Lamar v. United States*, 240 U. S. 60, although the argument attempts to give a constitutional turn to them and to other technical complaints, such as that the judge was absent during a part of the deliberations of the grand jury. We find no error in this or the other particulars mentioned in argument.

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Counsel for Plaintiffs in Error.

*Jones v. United States*, 162 Fed. Rep. 417, 421. *S. C.*, 212 U. S. 576. *Commonwealth v. Bannon*, 97 Massachusetts, 214, 220. See *Brees v. United States*, 226 U. S. 1, 11. As to the arraignment see *Garland v. Washington*, 232 U. S. 642, 646, 647. We deem it unnecessary to go into further detail.

*Judgment affirmed.*

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BADDERS *v.* UNITED STATES.

ERROR TO THE DISTRICT COURT OF THE UNITED STATES FOR  
THE DISTRICT OF KANSAS.

No. 521. Argued February 23, 24, 1916.—Decided March 6, 1916.

Congress has power to regulate the overt act of putting a letter into the post office of the United States; and may prohibit, under penalty, such an act when done in furtherance of a scheme which it regards as contrary to public policy, whether it can forbid the scheme or not, and so *held* as to Criminal Code, § 215.

Intent may make criminal an act, otherwise innocent, if it is a step in a plot.

Congress may enact that each putting of a letter in a post office is a separate offense.

The punishment imposed in this case on each of five counts, of five years, the periods being concurrent and not cumulative, and a fine of \$1,000 on each of seven counts, *held* not to be cruel and unusual within the prohibition of the Federal Constitution.

This court condemns the extravagant and unnecessary multiplication of exceptions and assignments of error.

THE facts, which involve the construction and constitutionality of § 215, Criminal Code, and the validity of a conviction and sentence thereunder, are stated in the opinion.

*Mr. James H. Harkless*, with whom *Mr. D. R. Hite* and *Mr. Clifford Histed* were on the brief, for plaintiff in error:  
Section 215 of the Criminal Code as applied to the in-